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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 4707/2016**

SAI INCORPORATION ..... Petitioner
Through: Ms. Anjali Manish with Mr. Rahul Ranjan, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) & ANR. ..... Respondents
Through: Mr. Rahul Kaushik, Senior Standing counsel for CBEC with Mr. Dhanesh Kumar, Advocate for Respondent No.2.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **02.06.2016**

1. The prayer in this petition under Article 226 of the Constitution of India is for a direction to Respondents to unconditionally release the goods imported against Bill of Entry ('B/E') No. 8450156 dated 27th February 2015 and seized under *panchnama* dated 2nd March 2015.

2. The point urged is that a show cause notice ('SCN') had to be issued to the Petitioner within six months of the date of seizure of the goods in terms of Section 110 (2) of the Customs Act, 1962 ('CA'). However, no such SCN has been issued till date. It is further contended that in terms of the proviso to Section 110 (2) of the CA till date there is no order passed by the

Principal Commissioner or the Commissioner of Customs extending the period for issuance of SCN. It is pointed out that although one year and three months have lapsed since the date of seizure of the goods, till date no SCN has been issued.

3. Notice was issued in this petition on 20th May 2016 to enable the Respondents to obtain instructions. Notice was accepted by Mr. Kaman Nijhawan, learned Senior Standing counsel for the Respondents.

4. Today Mr. Rahul Kaushik, learned Senior standing counsel for the Respondents, appears states that he has been handed over the paper book only two days ago and that he is still awaiting complete instructions. He prays for some more time.

5. Considering that the goods were seized way back on 2nd March 2015 and more than one year and three months have lapsed with no SCN being issued, the Court is not inclined to entertain the request for further time to obtain instructions from the Respondent.

6. The fact that the seizure of the imported goods took place on 2nd March 2015 is not in dispute. The case of the Petitioner was that the goods were purchased from M/s. Crown Enterprise in terms of a High Seas Sale Agreement on 25th February 2015. Upon arrival in India of the imported goods, i.e., New Radial Car tyres of Wanli Brand of different dimensions comprised in 2542 pieces of the value of US$ 49454, the Petitioner filed the above B/E dated 27th February 2015 for the purpose of home consumption

and declared the value of Rs. 33,95,957.57. The Customs Officer however assessed the value as Rs. 34,29,917.15. The Petitioner thereafter paid customs duty of Rs. 9,77,570 as assessed by the Customs Officer.

7. It is stated that despite the customs duty having been paid the goods were not cleared. On 2nd March 2015 the goods were examined and a *panchnama* drawn up by the Customs Department. The case of the Customs Department is that there was mis-declaration of some of the imported tyres. It is stated that there were 2960 old and used tyres apart from 539 new tyres of Wanli brand. There was also mis-declaration in respect of 2414 new tyres of Bridgestone, Goodyear and Michelin.

8. According to the Petitioner, the Respondents did not grant provisional release of the goods despite several requests. Meanwhile, the statements of the partners of the Petitioner were recorded under Section 108 of the CA on 13th July 2015 and 10th August 2015. An SCN was issued on 27th August 2015 to the Petitioner. However, the said document is titled 'Show Cause Notice', it is in fact a SCN asking the Petitioner to show cause why "the time period for the issuance of show cause notice should not be extended for a further period of 6 (six) months, i.e., upto 1st March 2016 under the proviso of sub-section (2) of Section 110 of the Customs Act, 1962." A photocopy of the signed SCN has been annexed with the petition as Annexure P-10. It is, therefore, plain that the above SCN was not the SCN required to be issued under Section 110 (2) of the CA but an SCN in terms of the proviso to Section 110 (2) of the Act.

9. According to the Petitioner, the fact of issuance of the above SCN dated 28th August 2015 was known to the Petitioner only much later. Meanwhile the Petitioner kept making representations to the Department for re-export of the imported goods. On 7th January 2016 the Petitioner wrote a letter to the Respondent seeking provisional release of the goods. There was no response to these requests. It is in those circumstances that the present writ petition was filed.

10. The case of the Petitioner that no order extending the period for issuing the SCN in terms of the proviso to Section 110 (2) CA has been passed pursuant to the SCN dated 27th August 2015 has not been controverted by the Department. Mr. Kaushik, learned counsel for the Respondents states that the details in that regard are not available. According to his information, the relevant files with the Department were destroyed in a fire. There is also no information whether in fact pursuant to any such order extending the time for issuing the SCN, a SCN was in fact issued in terms of Section 110 (2) CA. The Petitioner is categorical that no such SCN has been issued to it till date. Thus the un-rebutted position is that even after the lapse of the extended period of six months after the seizure of the goods, no SCN under Section 110 (2) CA has been issued to the Petitioner.

11. Mr. Kaushik sought to persuade the Court to examine the SCN dated 28th August 2015 which speaks of the Petitioner's involvement in the alleged illegal import. However, since the only point urged as far as the Petitioner is concerned is the non-compliance with the mandatory time-limits set out in Section 110 (2) of the CA, it is not considered necessary to

examine the merits of the allegations in the SCN dated 28th August 2015.

12. This Court has recently in ***Shiv Shakti Trading Company v. The Commissioner of Customs (Preventive)*** (decision dated 6th April 2016 in W.P. (Civil) No. 11641 of 2015) discussed the decision the Supreme Court in ***Harbans Lal v. Collector of Central Excise and Customs, Chandigarh (1993) 3 SCC 656*** and of this Court in ***Jatin Ahuja v. Union of India 2013 (287) ELT 3 (Del)*** and ***Auto Creaters v. Union of India 2015 (325) ELT 49 (Del).*** This Court held that the failure by the Customs Department to release the goods notwithstanding the expiry of the time limits under Section 110 (2) was unlawful. It is pointed out by Mr. Kaushik that the appeals of the Department against the decisions in ***Jatin Ahuja*** (*supra*) and ***Auto Creaters*** (*supra*) are pending consideration before the Supreme Court. However, there is no stay granted by the Supreme Court of those decisions.

13. In that view of the matter, the Court holds that that the action of the Department in continuing to retain the seized goods of the Petitioner, in respect of which the Petitioner has paid customs duty as assessed, without issuing a SCN within the mandatory time limit in terms of Section 110 (2) of the CA, is unlawful. The Court accordingly directs that the goods seized shall be released unconditionally to the Petitioner immediately and in any event not later than two weeks from today. However, this will not preclude the Department from proceeding to take any further action as permissible to it in law including proceeding against the Petitioner under Section 124 of the CA.

14. The petition is disposed of in the above terms. Order be given *dasti* to learned counsel for the parties under the signature of the Court Master.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 02, 2016
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