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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 5247/2016 & CM 21829/2016 (for stay)**

LINDT EXPORTS ..... Petitioner
Through: Mr. Rakesh K. Khanna, Senior Advocate with Mr. Naveen Malhotra, Ms. Anandita Sharma and Ms. Shefali Jain, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Ms. Ruchi Jain, Advocate for UOI/R-1.
Mr. Satish Kumar, Senior Standing counsel for R-2.
Mr. Satish Aggarwala, Advocate for DRI/R-3.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **02.06.2016**

1. The challenge in this petition by Lindt Exports through its Sole Proprietor Mr. Rajiv Verma, who in the affidavit in support of the petition says that he is presently residing in United States of America, is to a Show Cause Notice ('SCN') dated 24th December 2004 issued by the Additional Director General, Department of Revenue Intelligence ('DRI') under Section 28 of the Customs Act, 1962 ('CA') on the ground that the said SCN is without jurisdiction.

2. Mr. Rakesh K. Khanna, learned Senior counsel appearing for the

Petitioner, refers to the judgment of this Court dated 3rd May 2016 in W.P.(C) No. 441/2016 (***Mangali Impex Ltd. v. Union of India***) where *inter alia* while interpreting the amendment to Section 28 (11) of the CA, the Court has held that prior to 8th April 2011, officers of the DRI, Directorate General of Central Excise Intelligence ('DGCEI') etc. were not 'proper officers' within the meaning of Section 2 (34) of the CA and, therefore, could not have issued or adjudicated SCNs under Section 28 of the CA. He . accordingly submitted that the impugned SCN is wholly without jurisdiction and notwithstanding that it has been followed by adjudication order which has attained finality with the further challenge by the Petitioner failing before the Supreme Court, this Court should entertain the present petition.

3. Reliance is placed by Mr Khanna on the decisions in ***Chandrabhai K. Bhoir v. Krishna Arjun Bhoir (2009) 2 SCC 315***, ***Balvant N. Viswamitra v. Yadav Sadashiv Mule (2004) 8 SCC 706***, ***Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad (2015) 7 SCC 690, Shivshankar Gurgar v. Dilip (2014) 2 SCC 465, A. Jithendernath v. Jubilee Hills Coop. House Building Society (2006) 10 SCC 96*** and ***Union of India v. Ramesh Gandhi (2012) 1 SCC 476*** to urge that a decree passed by a Court without jurisdiction is non est and void *ab initio*; that the defect of jurisdiction goes to the root of the matter and such a decree or order can be challenged at any stage even in a later or collateral proceedings.

4. Mr. Satish Aggarwala, learned Senior Standing counsel appearing for the DRI has filed a written note of submissions. He opposed the grant of the relief sought in the present petition. He pointed out that the impugned SCN

stands adjudicated and an order in original dated 31st May 2006 has been passed by the Commissioner of Central Excise (Adj.), New Delhi confirming the demand raised in the SCN. Against the said order the Petitioner went in appeal to the CESTAT which required him to make a pre-deposit of Rs.2.50 crores. The Petitioner failed to make the pre-deposit and the appeal was dismissed.

5. Later on 25th May 2011 i.e. nearly five years after the date of the order of the CESTAT, the Petitioner made the pre-deposit. The CESTAT allowed the application for restoration of the appeal by its order dated 3rd June 2011. This order was set aside by this Court on 27th September 2011 in an appeal filed by the Customs Department. When the Petitioner again approached this Court with a miscellaneous application this Court passed an order dated 3rd February 2012 requiring the Petitioner to deposit the said sum of Rs.2.50 crores together with interest @ 12% per annum from the date on which such deposit was due i.e. 29th December 2006 till 25th May 2011 when the amount was actually deposited.

6. The above order of this Court was challenged by the Petitioner in the Supreme Court by Special Leave Petition (Civil) Nos. 12223-12224/2012. The said SLPs were dismissed by the Supreme Court on 1st October 2012 after noting that the appeal was pending before the High Court. Subsequently an application filed by the Petitioner in this Court for modification of the order dated 3rd February 2012. This application was dismissed by the High Court on 22nd February 2013. This order was again challenged by the Petitioner in the Supreme Court by SLP (C) No. 1110-

1111/2013 which was dismissed on 6th September 2013.

7. The Petitioner did not stop there. He again filed an application before this Court in 2016 for recalling the order dated 22nd February 2013 stating that he was now ready to pay the interest of Rs.1,27,50,000/- in terms of the directions contained in the order dated 3rd February 2012. This was dismissed by the High Court on 4th January 2016. The Petitioner again filed SLP (C) No. 7741/2016 in the Supreme Court and the said SLP was dismissed on 6th May 2016.

8. It is accordingly contended by Mr Aggarwala that the impugned SCN challenged in the present petition and the adjudication order passed pursuant thereto have attained finality. It will be an abuse of the process of law to permit the Petitioner to challenge the impugned SCN on fresh grounds.

9. The above submissions have been considered. The judgment of this Court in ***Mangali Impex Ltd. v. Union of India*** (*supra*) which interpreted Section 28(11) of the CA as amended was intended to apply to all pending cases and the cases that would arise thereafter. The Court noted that the administrative chaos spoken of by the Supreme Court in ***Commissioner of Customs v. Sayed Ali (2011) 3 SCC 537*** in permitting any and every customs officer to exercise the power of issuing SCNs and undertake adjudication and assessments without specifying "the proper officer" empowered to do so was not really resolved by the amendment to Section 28 (11) of the CA.

10. There are several reasons why the Court is not inclined to entertain the present petition. As already noticed, where the Petitioner has had several

rounds of litigation up to the Supreme Court and has failed in each of them. He never once raised the plea in all these years of the officer of the DRI lacking jurisdiction. In the circumstances, permitting the Petitioner at this stage, nearly 12 years later, to challenge the SCN or the adjudication order arising out of a SCN issued more than 12 years ago would constitute condoning a blatant abuse of the process of law.

11. The decisions cited by Mr. Rakesh K. Khanna, learned Senior Advocate appearing for the Petitioner relate to cases of inherent lack of jurisdiction of the court whose decree is under challenge. They also relate to cases where the decree was obtained through fraudulent means. They include cases where proceedings are pending and a challenge is raised to the very jurisdiction of the Court that passed such decree. Here, however, the Petitioner is trying to initiate another round of litigation for the same relief after having been unsuccessful in the several rounds of litigation in which interestingly he never raised the issue of lack of jurisdiction of the officer who issued the SCN.

12. In the facts and circumstances of the case, the Court is not inclined to entertain the present petition. The writ petition and the application are dismissed, but in the circumstances with no order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 02, 2016/dn