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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9012/2016 & C.M.Nos.36522-36523/2016

RAM NIWAS VERMA ..... Petitioner
Through: Mr.V.S.Negi, Advocate

versus

ADDITIONAL COMMISSIONER OF CUSTOMS ..... Respondent
Through: Mr.Sanjeev Narula, Sr.Standing Counsel with Mr.Sunil Dalal and Mr.Abhishek Ghai, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **30.09.2016**

1. The challenge in this petition is to the order dated 18.07.2016 whereby the additional commissioner proceeded to levy customs duty penalty and also directed the confiscation of 6452 grams of gold valued at `1,67,03,286/- under Section 111(d), 111 (i), 111 (j), 111 (l) and 111 (m) of the Customs Act. The order also imposed a penalty of `33,50,000/- under Section 112 & 114AA of the Act.

2. The brief acts are that the quantity of gold was seized from the petitioner upon arrival on 16.06.2013 at Delhi from UAE. Show cause notice dated 07.10.2013 was issued, demanding customs duty; the notice further proposed other actions under the Customs Act. Apparently, it is not in dispute that the petitioner deposited customs duty on 11.11.2013 and thereafter moved the Customs and Excise Settlement Commission under Section 127B the next day. The

commission entertained the application and admitted it. Thereafter it adjudicated the application and settled the same by its order dated 16.05.2014; the petitioner was required to and did deposit a penalty amount of `10 lakhs and redemption fine of `10 lakhs. This order was set aside at the behest of the Customs by a writ petition filed before this court i.e. WP(C) 7363/2014 on 25.08.2015. The petitioner was thus relegated to adjudication of Show Cause Notice by the competent officer. In the meanwhile the President of India gave his assent to the Finance Bill which introduced Explanation 3 to Section 28 (11) of the Customs Act.

3. The petitioner's main contention is that once the explanation came into force, and given that he had deposited the entire duty payable as well as the penalty amount – which corresponded to 15% of the penalty that could have been deposited in terms of the Explanation 3, and within time limit i.e. 30 days of the assent given by the President to the Finance Bill 2015, the customs authorities seized to have any jurisdiction in the matter. It is thus argued that the show cause notice could not have been proceeded with, and the impugned order made.

4. It is pointed out that on behalf of the customs authorities that the express reference to non payment, short payment or erroneous refund, leads to the inference where show cause notices concerned other remedies that can be resorted to by the revenue such as confiscation in the case of prohibited items or those which are absolutely banned, the option of depositing customs duty and part

penalty does not arise.

5. The third explanation in a sense is meant to relief adjudicating authorities where even belated wisdom dawns upon those subjected to show cause notice proceedings for short levy, misdeclaration and those resorting to erroneous refund claims. It is premised upon the deposit of the correct amount of duty on the one hand and a certain quantum i.e. 15 % of the penalty along with up-to-date interest. There may be some merit in the petitioner's submission that the option of confiscation is one always available to the revenue in the given circumstances and therefore was not expressly mentioned in the amendment or the third explanation to Section 28 (11). At the same time, equally the Parliament's intention might have been to limit the option available to a class of defaulters/ those indulging in misdeclarations to only cases of short levy etc., expressly referred to in Section 28 given its location i.e. as part of that provision. Moreover, this court is also alive to the fact that a liberal interpretation at this stage would have a more adverse effect upon the revenue as the unintended results that would ensue and clothe those indulging in behaviour which is outlawed by the Parliament such interpretation cannot be visualized. In other words whether absolutely prohibited or banned items in respect of which Parliament's intent is to be gathered should be seen after an overall consideration of the provisions of the Act as well as other authorities applicable. In the circumstances that exercise would be best left to be considered by the appropriate appellate authorities. In these circumstances, the court is of the opinion that this petition ought not to be entertained under

Article 226 of the Constitution since the importer has an alternative efficacious remedy. The writ petition along with pending applications is therefore dismissed.

6. It is open to the petitioner to file appeal to the Commissioner (Appeals). Since these proceedings filed about a month back, the appeal would obviously be time barred however, the court is of the opinion that in the circumstances, the appeal should be considered on its merits and not rejected on the ground of delay provided it is filed within two weeks from today.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 30, 2016
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