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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8825/2015

MOHD. SALMAN KHAN

..... Petitioner

Through: Ms Sangita Bhayana, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr K. K. Jha, Senior Standing counsel
with Mr Reshesh Mani Tripathi, (Govt. Pleader),
Advocate for Respondent No.1.

Ms Sonia Sharma, Senior Standing Counsel for
Respondent Nos.2, 3 & 4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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28.03.2016

1. The Petitioner has approached this Court seeking release of the Nepalese currency that were seized from him when he was on his way to Dubai on 17th June, 2014. The seizure was affected by the Air Custom Officer (Preventive), Indira Gandhi International Airport, Terminal-3 (Respondent No.4 herein). According to the Petitioner, Nepalese currency of the value of Rs. 5 lakhs equal to Indian Rs. 3.1 lakhs were seized. The Petitioner was given a detention receipt No. 19455 dated 17th June, 2014 by Respondent No. 4.

2. The Petitioner states that he is a non-resident Indian and is working as a salesman in Dubai. He states that his family is settled in India and he frequently visits them.

3. On 7th July, 2014, the Petitioner made an application to the Respondents through an Advocate for release of the currency. He states that he has till date not received any reply from the Respondents.

4. The stand taken by the Respondents in the counter affidavit is that apart from seeking release through the above application through his Advocate, "he was not present himself for examination or has not submitted any document to prove the legitimate possession of the currency." In para 6 of the counter affidavit, a distinction is sought to be drawn between "detention" of the currency and "seizure" of the currency. It is specifically averred that "department did not convert the detention into seizure as the Petitioner never turned back and did not cooperate.

5. In the rejoinder affidavit specific attention has been drawn by the Petitioner to Section 110(2) of the Customs Act, 1962 ('Act') which makes it clear that if no Show Cause Notice (SCN) in writing is given under Section 124 (a) of the Act to the person from whom the goods are seized

then the goods shall be returned to such person. In terms of the proviso to Section 110 (2) of the Act, the said period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner (Customs) for a period not exceeding six months.

6. During the course of the hearing today, it transpired that despite the expiry of more than eighteen months since the date of seizure of the Nepalese currency from him, no SCN has been issued to the Petitioner. Further, it is not in dispute that the Petitioner's application for release of the currency has yet not been disposed of.

7. In response to a specific query from the Court, learned counsel for the Respondent was unable to point out any provision in the Act that permitted 'detention' of goods in lieu of 'seizure'. She was also unable to say if there was any protocol or manual devised by the Department of Customs for timely disposal of applications for release of seized goods. She repeatedly stated that the detention of the currency in the present case was at the Petitioner's own request and that it was the Petitioner who failed to come forward to produce the documents necessary to satisfy the Customs Department that he was entitled to the release of the seized currency in his

favour.

8. At the outset, it requires to be observed that the legislative intent has made clear in Section 110(2) of the Act which reads as under:

“S. 110 (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.”

9. Whatever may be the justification that the Customs Department wishes to put forth for seizing the goods, there is a definite time limit within which the Department has to determine if the seized goods are to be confiscated and if so, for giving a SCN under Section 124 (a) of the Act. There appears to be no provision for 'detention' of goods instead of their 'seizure'. Therefore, where a customs officer is satisfied that the person found with the goods is not able to produce the necessary documents to justify being in possession thereof, the Customs officer has to form an opinion under Section 110 (1) of the Act as to whether the said goods are liable to be confiscated and if so, to give a SCN under Section 124 (a) of the Act. Section 110(2) makes it clear that the maximum time limit for giving a SCN is six months from the date of seizure and this period is extendable by another six months provided sufficient cause is made out to the satisfaction of the Principal

Commissioner or Commissioner (Customs). The procedure for dealing with confiscation of goods and for their release has been provided in the Act itself. Section 110A also talks of provisional release of the goods that have been seized.

10. The upshot of the above discussion is that the Customs Department cannot take shelter under the device of 'detention' of goods in order to avoid the consequences flowing from the 'seizure' of goods. In other words, if the Customs Department is unable to give a SCN under Section 124 (a) of the Act within six months (plus another six months where a specific order to that effect has been passed) then in terms of Section 110 (2) of the Act, the said goods have to be released to the person from whom they were seized.

11. In the present case, there appears to be no legal justification for the Customs Department not 'seizing' the Nepalese currency recovered from the Petitioner in the first place and secondly, in not giving a SCN within six months of such seizure. In the absence of any provision in the Act that permits 'detention' of such goods, the Court has to proceed on the basis that what was effected on 17th June 2014 was a 'seizure' of Nepalese currency from the Petitioner. That the seized currency was in the possession of the

Petitioner and seized from him is also not in dispute.

12. If that is the position, then under Section 110(2) of the Act a SCN had to be given under Section 124 (a) of the Act within six months of 17th June 2014. With no such SCN having been given, the inevitable consequence, therefore, is that as mandated by Section 110 (2) of the Act, the seized goods “shall be returned to the person from whose possession it was seized”.

13. Consequently, the Respondents are directed to release the Nepalese currency for which a 'detention' receipt was issued on 17th June 2014, to the Petitioner upon him presenting himself with a certified copy of this order before the Superintendent of the warehouse (where the currency is presently kept by the Respondents) not later than two weeks from today. The writ petition is disposed of with the above terms.

14. Order *dasti*.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 28, 2016

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