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

+ **W.P.(CRL) 2428/2017**

BIPLAB RAY

..... Petitioner

Through: Mr.Mukesh Gupta, Adv.

versus

COMMISSIONER OF CUSTOMS & ORS

..... Respondents

Through: Mr.Sanjeev Narula, Sr.Standing Counsel
with Mr. Abhishek Ghai, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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10.11.2017

The petitioner seeks release of the FDR No. GENPUB-OTH-2YL3-
INR issued by the State Bank of India dated 05.04.2014 for the amount of
Rs.2 lakhs which was deposited by him as a surety for one Ms.Suthawadee
Kungswaong (hereinafter referred to as “ the pax”)

The pax was held at the IGI Airport for being in possession of
commercial quantity of gold without paying the requisite custom duty. For
her release, the petitioner had offered a draft of Rs.2 lakhs as surety.
Thereafter, a show cause notice was issued to the pax for explaining as to
under what circumstances, the gold articles were imported in India without
payment of custom duty. The notice was responded to and a final order was
passed by the competent authority on 10.2.2017.

By the aforesaid order, the gold articles were confiscated and the
noticee was given an option to redeem the goods on payment of redemption

fine of Rs.6,01,778/- under Section 125 of the Customs Act, 1962 after payment of the applicable custom duties @ 36.05%, other duties, cess and charges as applicable, subject to the condition that the goods will be re-exported after payment of duty, redemption fine and penalty. For the re-export, the value of the gold articles were assessed at Rs.30,08,888/-. A penalty of Rs.4,51,334/- has also been imposed on the noticee under Section 112 and 114AA of the Customs Act, 1962.

Mr.Sanjeev Narula, learned Sr.Standing Counsel for the Customs has informed this Court that the redemption fine has not been paid. As such, the gold articles remain confiscated with the respondent. Mr.Narula has further submitted that criminal prosecution against the noticee is in contemplation. In response to the aforesaid, Mr.Gupta, learned counsel for the petitioner has submitted that assuming that the criminal prosecution is launched against the noticee, that would only be a separate and distinct proceeding and there would no necessity of holding back the surety amount deposited by the petitioner.

In that view of the matter, since the adjudication proceedings against the noticee are over, there would no justification for the Customs Department to keep the surety amount offered by the petitioner.

In such circumstances, it is directed that the FDR No. GENPUB-OTH-2YL3-INR offered by the petitioner at the time of furnishing of bond by the noticee, be returned to him.

For the aforesaid purpose, the petitioner shall approach the competent authority, that is, Additional Commissioner of Customs ((Import) Inland Container Depot, Tughlakabad, New Delhi, who on being satisfied about the identity of the petitioner, shall release the FDR in his favour. The

Additional Commissioner of Customs shall also take an endorsement of the petitioner of his having been received the FDR pursuant to the order passed by this Court.

The petition is disposed of accordingly.

Dasti.

ASHUTOSH KUMAR, J

NOVEMBER 10, 2017

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