IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3328 OF 2018

Brio Mercantile Pvt. Ltd. **... Petitioner**

V/s.

Commissioner of Customs(NS-III)
SIIB(I) and Ors. **... Respondents**

Mr. Atish Dipankar Ray i/b Prashant Nakati for the Petitioner.
Mr. Pradeep Jetly for the Respondent.

CORAM : S.C.DHARMADHIKARI &
PRAKASH D. NAIK, JJ.
DATE : 09th APRIL, 2018

P.C.:

. Rejoinder affidavit taken on record.

2 After hearing both the sides, we do not see how we can compel the Respondent to issue an order of provisional release of the goods.

3 The Petitioners are aware that goods are kept under hold. The goods are covered by two Bills of Entry dated 25th and 31st of May 2017.

4 It is now stated that after examination of the goods on 03.08.2017 and thereafter, a show cause notice is issued i.e. dated 31.01.2018. The Petitioner challenges the issuance of such a show cause notice. The petition is filed on 12.03.2018.

5 The Petitioner insisted that the goods be provisionally released and within

a period of one week from today.

6 On the other hand, Mr. Jetly appearing for the Revenue submits that the Revenue is prepared to pass an order on the show cause notice within four weeks from today provided the Petitioner co-operates and then there is no question of any provisional release.

7 We put it to the Counsel appearing for the Petitioner that we will keep all the contentions open including that the show cause notice is issued without jurisdiction. Merely because a point of jurisdiction is raised by the Petitioner, does not mean that the Competent Authority is automatically denuded of its power and Authority in law to adjudicate the show cause notice. All that would happen is that he will be obliged to render a finding on this preliminary objection of jurisdiction. If he has jurisdiction to decide the matter, then the law also enables him to rule on the point of his own jurisdiction. Given, the fact that the Petitioners have waited since May, 2017, in the peculiar facts of this case, we are not inclined to consider their request for provisional release of the goods.

8 However, if the Revenue is unable to adjudicate the show cause notice and pass the order within a period of four weeks from today, then, the Revenue shall consider the request of the Petitioners for provisional release of the goods, no separate application would be necessary for that purpose. This Writ Petition itself can then be treated as an application/request for provisional release of the goods.

9 We therefore, dispose of the Writ Petition by clarifying that we have not

expressed any opinion, either on the point of jurisdiction or on merits. In the event, the show cause notice is not adjudicated within four weeks from today, meaning no final order passed thereof, then, the Petitioners are free to apply for provisional release of the goods and that application then be decided within a period of one week from the date it is made.

10 The Writ Petition is disposed of in the above terms, with no order as to costs.

(PRAKASH D. NAIK, J.) **(S.C.DHARMADHIKARI, J.)**