R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12915 OF 2018

Nirvanza Trading India Ltd .. Petitioner

Versus

Union of India & Ors. .. Respondents

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- Mr. Ashok Singh a/w Mahi Lalka, R.N. Gaonkar, Nimesh Mehta for the Petitioner
- Mr. Pradeep S. Jetly for the Respondents

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : NOVEMBER 30, 2018.

P.C.:

1. This petition under Article 226 of the Constitution of India seeks a direction to Deputy Commissioner of Customs (Respondent No. 3) to provisionally release the perfumes / deodorants which were imported under Bill of Entry dated 9.9.2018 and seized under Section 110 of Customs Act, 1962 ("**the Act"** for short). This provisional release is sought under Section 110A of the Act, pending adjudication of the Bill of Entry dated 9.9.2018.

2. The petitioner filed a Bill of Entry dated 9.9.2018, seeking to import perfumes / deodorants (“**the said goods”** for short) into India. The officers of the respondents on 9.10.2018 seized the said goods under Section 110 of the Act. This under a reasonable belief that the goods are liable confiscation. On 30.10.2018, the petitioner by letter addressed to Respondent No. 2 [Commissioner of Customs (Genera)] and Respondent No. 3 (Deputy Commissioner of Customs) sought provisional release of the said goods pending adjudication under Section 110A of the Act. The aforesaid application is still pending. Thus, all that the petitioner seeks is a direction for early disposal of the petitioner's application under Section 110A of the Act.

3. Mr. Jetly, the learned counsel for the Revenue, submits that the petitioner is not cooperating and it has become difficult for the respondents to carry forward their investigation. This as the summons served upon the address given by the petitioner in the bill of entry as well as in the petition were received back by the Customs on the ground that addresses not known. It is, in the above circumstances, that it is submitted hat this Court should not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India.

4. Mr. Singh, the learned counsel for the petitioner, states that the petitioner is in the process of relocating to Mumbai. Therefore, the office of Delhi is now manned by his staff and on enquiry, he learnt that the staff was irregular in attending the office. This non receipt of summons was not deliberate. In any event, the petitioner would inform the respondents about the correct addresses where summons could be served. The petitioner's director would make himself available to the Customs Department by appearing before the assessing officer on Monday, 3rd December, 2018 and thereafter whenever called for by the respondents. On instructions, Mr. Singh states that the petitioner's director will cooperate with investigation.

5. In the above view, we are satisfied with the explanation given by the petitioner's director in his affidavit-in-rejoinder dated 29.11.2018 for not responding to the summons. This coupled with the assurance given to us that the petitioner's director would cooperate with the investigation and make himself available before the Adjudicating Authority on 3.12.2018 and thereafter whenever called, would not warrant dismissal o the peritonitis on account of the petitioner's conduct as canvassed by the Revenue.

6. Therefore, both the proceedings i.e investigation and provisional release application can proceed at the same time. The respondents are directed under Section 110A of the Act to deal with the application for provisional release of goods seized, pending investigation. The Respondents must perform their statutory duties and dispose of the application dated 30.9.2018 in accordance with law.

7. Mr. Ashok Singh, the learned counsel for the petitioner, states that the petitioner seeks to file further representation in support of its application dated 30.10.2018 for provisional release of seized goods . The petitioner is permitted to do so. Mr. Jetly, the learned counsel for the Revenue states that within a period of two weeks of the petitioner filing their additional representation, the application dated 30.11.2018 for provisional release of the seized goods would be disposed of in accordance with law.

8. The petition is disposed of in the above terms. No order as to costs.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**