IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2527 OF 2017

Anirudh Verma .. Petitioner
v/s.
Union of India & Ors. .. Respondents

WITH
WRIT PETITION NO. 2884 OF 2017

Lalit Kulthia Proprietor BSK Jewellers .. Petitioner
v/s.
Union of India & Ors. .. Respondents

WITH
WRIT PETITION NO. 2683 OF 2017

Sanjay Kulthia .. Petitioner
v/s.
Union of India & Ors. .. Respondents

Mr. Sukhendra Bhattacharya a/w Mr. Rathindra Bandopadhyay I/b Subra Karmarkar for the petitioner
Mr. Pradeep S. Jetly for the respondents

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 6th JUNE, 2019

P.C.

1. Writ Petition No. 2683 of 2017 is not on board. Upon mentioning taken on board. This petition also challenges the order dated 9th May, 2017 of the Additional Commissioner of Customs (Prev.) Mumbai. The two petitions listed on board also challenge the same

order dated 9th May, 2017 of the Additional Commissioner of Customs (Prev.), Mumbai. Therefore, at the request of the parties, this petition was taken up for consideration along with the two petitions already listed on today's board.

2. These three petitions under Article 226 of the Constitution of India challenge a common order dated 9th May, 2017 by the Additional Commissioner of Customs, Preventive Mumbai. By the impugned order dated 9th May, 2017 the gold bars weighing 12 kags valued at Rs.3.17 crores were confiscated under Section 111 (b)(d) and (l) of the Customs Act, 1962 (Act). Besides, penalty of Rs. 32 lakhs under Section 112 (a) and (b) of the Act was imposed upon each of the petitioner in Writ Petition Nos. 2527 and 2884 of 2017. So far as Writ Petition No. 2683 of 2017 is concerned, a penalty of Rs.16 lakhs has been imposed upon the petitioner therein by the impugned order under Section 112(a) and (b) of the Act.

3. At the very outset, we pointed to the petitioners that a remedy of an appeal exists under the Act, therefore, why should we entertain this petition.

4. Mr. Bhattacharyay, the learned Counsel for the petitioner submits that the alternative remedy of an appeal to Commissioner (Appeals) would not come in the way of this Court entertaining the petitions as the the impugned order dated 9th May, 2017 is without jurisdiction. In support of the aforesaid submission, Mr. Bhattacharya, learned Counsel for the petitioner places reliance upon a Circular No. 1053 dated 10th March, 2017 issued by the Central Board of Excise and Customs being a Master Circular on show-cause notice, adjudication and recovery proceedings. It is submitted that the Additional Commissioner in terms of the Circular cannot adjudicate issues when the demand is in excess of Rs. 2 crores. In particular he invited our attention to paragraph nos. 10 and 11.1 of the master circular which reads as under :-

> *10. Adjudication :- Officers of Central Excise have been vested with powers under Section 33A of Central Excise Act, 1944 to adjudicate the Show Cause Notice issued to the noticees and answerable to the officers. They, in their capacity is adjudicating officers act as quasi-judicial officers. Further as per Section 2(a) "Adjudicating Authority" means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal.*
>
> *11.1. Monetary Limits :- Board has revised monetary limits for adjudication on 29.09.2016. The revised monetary limits and other instructions in relation to adjudication are as follows :*

Sr. No.	*Central Excise Officer*	*Monetary Limits of duty / tax / credit demand for Central Excise and Service Tax*
1.	*Superintendent*	*Not exceeding Rupees Ten Lakhs*
2.	*Deputy / Assistant Commissioner*	*Above Ten Lakhs but not exceeding Rupees Fifty Lakhs*
3.	*Additional / Joint Commissioner*	*Above Fifty Lakhs but not exceeding Rupees Two Crore*
4.	*Commissioner*	*Without limit i.e. cases exceeding rupees two crores*

The above monetary limits are hereby prescribed for all categories of cases, except the following:
(a) cases of refund (including rebate) under Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax cases also under Section 83 of the Finance Act, 1994, shall be adjudicated by the Deputy Commissioner / Assistant Commissioner without any monetary limit.
(b) cases related to issues mentioned at Sr. No.(a) and (d) under the first proviso to Section 35B(1) of the Central Excise Act, 1944 shall be adjudicated in the following manner:

Sr. No.	*Central Excise Officer*	*Monetary Limits for Central Excise*
1.	*Additional / Joint Commissioner*	*Exceeding Rs. 50 lakhs*
2.	*Deputy / Assistant Commissioner*	*Above Rs. 10 lakh but not exceeding Rs. 50 lakh*
3.	*Superintendent*	*Not exceeding Rs. 10 lakhs*

5. From the above, it is evident that the above paragraphs in the Circular are applicable only to adjudication proceedings under the Central Excise Act, 1944 and the Finance Act, 1994 (Service Tax). It has no application to proceedings under the Act. In the above view, it

cannot be said that the impugned order passed by the Additional Commissioner of Customs under the Act is without jurisdiction warranting interference by this Court in its extraordinary jurisdiction.

6. Mr. Bhattacharya, learned Counsel for the petitioner also sought to make submissions on merits of the impugned order, including the non-granting of cross-examination. This to support his contention that the impugned order would be required to be interfered with by this Court in its writ jurisdiction.

7. We are of the view that there is an efficacious alternative remedy available from the impugned order dated 9th May, 2017 to the Commissioner of Customs (Appeals). The petitioner's grievance with regard to the merits of the impugned order including non-granting of cross-examination would be considered by the Commissioner of (Appeals) and adjudicated upon. It does not warrant interference of this Court in its extraordinary jurisdiction. However, while we dismiss the petitions, we make it clear that in case the petitioner does file an appeal before the Commissioner (Appeals) within a period of three weeks from today, the Commissioner (Appeals) would entertain the appeal on its own merits as the time spent in prosecuting these petitions

before this Court has to be excluded. This is on the basis of the Apex Court decision in ***M.P. Steel Corporation Vs. Commissioner of Customs, Service Tax 319 ELT 573.***

8. Needless to state that the petitioners would require to satisfy the other requirements for filing an appeal, including statutory requirements of pre-deposit in terms of Section 129E of the Act.

9. The three petitions are disposed of in the above terms.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**