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

+ **W.P.(C) 7997/2018**

M/S. WIDE IMPEX

..... Petitioner

Through: Ms. Anjali J. Manish, Ms.
Nidhi Tomar and Ms. Shweta Dhaka,
Advocates.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT),
ICD, TUGHLAKABAD, NEW DELHI & ORS. Respondents

Through: Mr. Harpreet Singh,
Senior Standing Counsel.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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09.08.2019

Dr. S. Muralidhar, J.:

1. The two prayers in the present petition read as under:

“a. issue a writ, order or direction in the nature of mandamus to the Respondents to unconditionally release the goods imported against bill of entry No. 4355561 dated 11.12.2017 which was detained illegally and seized on 30.01.2018 in the absence of any Show Cause Notice under Section 124 of the Customs Act, 1962 as per the provisions of Section 110(2) of the Customs Act, 1962; and/or

b. Issue a writ, order or direction in the nature of mandamus to the Respondents to provisionally release the goods imported against Bill of Entry No. 4355561 dated 11.12.2017 in compliance of the order dated 02.07.2018 passed by the

Learned Customs, Excise and Service Tax Appellate Tribunal,
New Delhi in Customs Appeals No. 51405 / 2018- DB”

2. As far as prayer (b) is concerned, on the very first date when this writ petition was listed i.e. 1st August, 2018, the following order was passed:

“Issue notice. Sh. Amit Bansal, Advocate accepts notice.
List on 17.09.2018.

In the meanwhile, having regard to the CESTAT's order dated 02.07.2018, subject to verifying that the conditions imposed for provisional release are complied with, the respondents are directed to ensure that the goods are released provisionally within a week.”

3. It is an admitted position that pursuant to the above order the goods in question have been released to the Petitioner upon the Petitioner complying with the condition as stipulated in the order dated 2nd July, 2018 of the Custom Excise Service Tax Appellate Tribunal (‘CESTAT’). Thus, the Petitioner has furnished the bank guarantee (BG) in the sum of Rs.15 lakhs, and a personal bond (PB) for Rs.6,78,577/-.

4. As far as prayer (a) is concerned, Ms. Anjali Manish, learned counsel for the Petitioner contends that the goods were detained by the Respondents upon their arrival on 11th December, 2017. According to her the goods were illegally detained till 30th January, 2018 when a formal seizure memo was issued. Despite six months having elapsed thereafter, no Show Cause Notice (SCN) under Section 124 of the Act was issued. Therefore, in terms of Section 110 (2) of the Customs Act, 1962 (‘Act’), the Petitioner is entitled to unconditional release of goods. Ms. Manish accordingly insists that the BG and PB furnished by the Petitioner pursuant to the above order dated 2nd

July, 2018 of CESTAT should now be released to the Petitioner. In support of the above contention she placed reliance on an order dated 21st February, 2019 passed by the CESTAT in Appeal No. C/53512-52513/2018-Cus.(DB) (*M/s. Swees James and Jewellery v. C.C. Jaipur-I*) and an order dated 3rd June, 2019 of the CESTAT, Zonal Bench, Ahmedabad in Customs Appeal No. 10497/2019 (*M/s. Gastrade International v. C.C. -Kandla*).

5. In reply, Mr. Harpreet Singh, learned counsel for the Respondent, drew attention of the court to the second proviso of Section 110(2) of the Act inserted by the Finance Act, 2018 with effect from 29th March, 2018.

6. At the outset it requires to be noticed that there are two significant amendments that have been made to Section 110 of the Act with effect from 28th March 2018 by the Finance Act, 2018. The wording of first proviso to Section 110(2) of the Act has been changed and the second proviso, which did not exist earlier, has been inserted. To better understand the change is depicted in the tabular form:-

Section 110 (2) before amendment	110(2) after amendment
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:	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.
Provided that the aforesaid period of six	Provided that the Principal

months may, on sufficient cause being shown, be extended by the [Commissioner of Customs] for a period not exceeding six months.	Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified: Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.
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7. The admitted position in the present case is that the provisional release order was passed by the Respondent on 27th April, 2018 subject to certain terms which were then modified by the CESTAT on an appeal by the Petitioner by its order dated 2nd July, 2018.

8. The contention of Mr. Singh is that since the provisional release order has been passed before the expiry of six months from the date of seizure, the second proviso would apply and if it does, then the need for issuing an SCN within a period of six months from the date of seizure will not apply. He accordingly contends that in terms of the second proviso, the Petitioner cannot insist on unconditional release of the goods.

9. In response to the above contention, Ms. Manish learned counsel for the Petitioner refers to the statement of the Finance Minister while tabling the

above amendment in Parliament which reads as under:

"163. I also propose to make certain changes to the Customs Act, 1962, to further improve ease of doing business in cross border trade, and to align certain provisions with the commitments under the Trade Facilitation Agreement. To smoothen dispute resolution processes and to reduce litigation, certain amendments are being made, to provide for pre-notice consultation, definite timelines for adjudication and deemed closure of cases if those timelines are not adhered to."

10. Ms. Manish submits that since the seizure in the present case took place on 11th December 2017, the second proviso, which was inserted on 29th March, 2018 would not have retrospective effect and therefore, would not apply to the seizure at hand. According to her, as long as no SCN was issued within six months from the date of the detention of the goods or, without prejudice to that contention, even before the expiry of six months from the date of seizure of the goods i.e. 30th January, 2018, notwithstanding the insertion of the second proviso, the goods should still be unconditionally released to the Petitioner.

11. The above submissions have been considered. At the outset, it must be noticed that both the decisions relied upon by learned counsel for the Petitioner do not apply to the facts of the present case. Both cases concerned the first proviso to Section 110 (2) of the Act and not the second proviso. In both those cases, the question was whether the requirement of the Commissioner having to record reasons in writing for extending the initial period of six months for issuance of an SCN includes hearing the person

affected. No such question arises in the present case. The Department is relying entirely on the second proviso to contend that the specified period of six months did not apply at all in the present case. It must be noted at this stage that an SCN was subsequently issued to the Petitioner on 11th April, 2019 and those adjudication proceedings pursuant thereto are in progress.

12. It appears to the Court that the legislative intent was to ensure that the person whose goods are seized is not left in a state of uncertainty, with neither the goods being released nor an SCN being issued despite six months having elapsed since the date of seizure. The second proviso states that where any provisional release of the seized goods is ordered under Section 110A of the Act, then the specified period of six months, as indicated in Section 110 (2) of the Act, would not apply. This is only to make sure that at least there is a provisional release of the seized goods as quickly as possible.

13. In the present case, a valuable right might have accrued to the Petitioner for unconditional release of the goods if no provisional release order had been passed before the expiry of six months from the date of seizure of the goods. In such event, the Petitioner could have argued that the valuable right accrued to the Petitioner cannot be taken away by passing a provisional release order beyond the period of six months from the seizure of the goods. The second proviso does contemplate a provisional release order being passed in respect of 'seized goods' i.e. goods that had already been seized even when the provision was amended on 29th March, 2018. In the present case, the period of six months had not expired, calculated either from the date of seizure of goods i.e. 30th January, 2018, or even 11th December, 2017

(if the Petitioner's contention in this regard is accepted) on the date of the provisional release order i.e. 27th April, 2018. Therefore, no valuable right of the Petitioner had yet accrued for seeking unconditional release of the goods. In other words, the second proviso did not take away what was already available to the Petitioner. In that sense, the second proviso in the present case cannot be said to have applied retrospectively in order to deprive the Petitioner of a valuable right that had accrued to the Petitioner.

14. In that view of the matter, the court is unable to accept the plea of the Petitioner for unconditional release of the goods in question. All other contentions regarding the legality of the seizure can be urged by the Petitioner in the adjudication proceedings pursuant to the SCN.

15. The petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 09, 2019

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