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

\+ **W.P.(C) 10841/2015**

PUSHPAK LAKHANI ..... Petitioner

Through: Ms. Anjali J.Manish & Mr. Priyadarshi Manish, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Harpreet Singh, Sr. Standing counsel with Ms. Suhani Mathur, Advocates for Respondent No.2
Mr. Satish Aggarwala, Advocate for Respondent No.3/DRI

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE I.S.MEHTA**

**O R D E R**

% **21.05.2019**

1. The Petitioner has approached this Court with the present petition praying for release of goods seized under the *Panchnama* dated 29th October, 2012. The main ground on which such release is sought is that the mandatory requirement of Section 110 read with 124 of the Customs Act, 1962 i.e. that a show cause notice ('SCN') should have been issued to the Petitioner within six months of such seizure had not been complied with. Reliance was placed on the decision of this Court in ***Jatin Ahuja v. Union of India (2013) 287 ELT 3 (Del)***.

2. Apparently the seizures were of high end luxury wrist watches recovered from the car parked outside the residence of the Petitioner. Simultaneous with the recovery of the above wrist watches, there were other seizures of similar goods as well as cash from other co-noticees i.e. Ms. Shikha Pahwa, Mr. Pankaj Lakhani and Mr. Purshottam Jajodia. Statements of all these persons were also recorded under Section 108 of the Act.

3. In the case of Mr. Purshottam Jajodia this Court delivered a judgment dated 24th July, 2014 in Writ Petition No. 416/2014 holding that there had been a failure to effect service of the SCN on Mr. Jajodia within the extended statutory period which expired on 28th October, 2013.

4. Against the above judgment of this Court in the case of Mr. Jajodia the Directorate of Revenue Intelligence (DRI) as well as Customs filed SLP (C) No. 24478/2014 in the Supreme Court, which is pending as of date. In the said SLP there was a stay granted on the judgment of this Court. An order was passed by the Supreme Court on 17th March, 2015 in the above SLP as under:

> "The respondents in both the appeals shall be entitled to refund of 50% of the seized amount and the watches seized by the appellant within four weeks hence subject to an undertaking filed before the Registry of this Court within ten days that if the appellant succeed in appeal, they shall make good the dues along with interest.
> List the matter after six weeks."

5. Following the order in Mr. Jajodia's case, on 11th August, 2015 an order was passed by a Division Bench (DB) of this Court in WP(C) No.

6605/2015 (***Pankaj Lakhani v. Commission of Customs***). In the said order, the DB noted that the Supreme Court had in SLP (C) No. 24478/2014 directed release of the goods but declined to pass a similar order. The order dated 11th August, 2015 passed by this Court reads as under:

> "The learned counsel for the petitioner places reliance on a Division Bench's decision of this Court in *Purshottam Jajodia vs. Directorate of Revenue Intelligence, New Delhi Directorate of Revenue Intelligence, New Delhi, 2014 (307) ELT 837 (Del).* However, the learned counsel for the respondents points out that the operation of the said judgment has been stayed by the Supreme Court by virtue of an order dated 11.05.2015 directed that the goods shall be released within a week. The learned counsel for the petitioner submitted that although the Supreme Court stayed the operation of the said judgment, yet it granted release of the goods and, therefore, the same order should be passed by this Court. We are afraid that we cannot accept this argument inasmuch as the Supreme Court has stayed the operation of the said judgment on which the petitioner places reliance. The powers of the High Court are not equivalent to those of the Supreme Court and it is also not clear as to under which circumstances the goods were directed to be released in that case.
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> Renotify on 22.02.2016."

6. An interim order was passed by this Court on 27th July, 2018 in the present petition as well as two other writ petitions i.e. WP(C) No. 8994/2016 ***(Shahi International v. Commission of Customs)*** and WP(C) No.7786/2018 ***(Parveen Kumar Jalan v. Additional Commission of Customs)*** directing *inter-alia* that "till the next date of hearing, no adjudication order shall be made".

7. Separate counter affidavits have been filed by both the DRI and the Customs. Annexed as Annexure 'B' to the counter affidavit filed by the Customs on 28th November, 2016 is a copy of an acknowledgement of receipt of the SCN dated 28th October, 2013 by the wife of the Petitioner. The said acknowledgement is explicit that she has received the said SCN at 8.30 p.m. on 28th October, 2013.

8. Despite two and a half years having lapsed since the filing of the said counter affidavit, the Petitioner has not chosen to file a rejoinder disputing the above document. The address of the wife of the Petitioner is clearly the same as his address and that it was received by her has not been able to be denied by the Petitioner.

9. Learned counsel for the Petitioner urged that this Court should pass an order on the same terms as the interim order passed by the Supreme Court on 17th March, 2015 permitting release of 50% of the seized watches and currency subject to undertaking being filed.

10. It is already noticed that a similar request was turned down by Division Bench of this Court by its order dated 11th August, 2015 in WP(C) No. 6605/2015. Consequently, the above prayer is declined.

11. As far as the central issue in the writ petition is concerned, with the Petitioner not having been able to persuade this Court about the Respondents' failure to serve him the SCN on or before 28th October 2013, the Court is not inclined to entertain the writ petition.

12. This order however will not preclude the Petitioner from urging all the contentions available to him in accordance with law in the proceedings pursuant to the impugned SCN, except of course that it has not been served on him.

13. The writ petition is dismissed. The interim order is vacated.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**MAY 21, 2019**
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