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

Date of decision: 21st DECEMBER, 2021

IN THE MATTER OF:

\+ **CRL.M.C. 236/2021 & CRL.M.A. 1244/2021**

AMIT KUMAR GUPTA ..... Petitioner

Through Mr. Priyadarshi Manish, Ms. Anjali J. Manish and Mr. Kinjal Shrivastava, Advocate

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) ..... Respondent

Through Mr. Satish Aggarwala, Sr. SPP with Mr. Gagan Vaswani, Advocate

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure is for setting aside the order dated 16.02.2020 passed the Ld. Chief Metropolitan Magistrate which directed the disposal of the goods imported by the petitioner which are perishable in nature and kept in the custody of the respondent in accordance with the Disposal Manual 2019. The Petitioner herein is a businessman and is the sole proprietor of M/s Jai Dev Traders, 384, Kirana Mandi, Ram Nagar, Ghaziabad-201001.

2. The facts, in brief, leading to the filing of the instant petition are as under:

a) The Petitioner in the course of his business during October-December 2016 had imported Dry Dates from Dubai originating from Iran, about

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8 containers thereof valued at Rs.1,24,22,876/- and 6 bills of entry of the dates were produced against the consignment.

b) The Customs department received intelligence information that this consignment did not originate in Iran but loaded from Karachi Port by one agency namely Maersk Pakistan Line and the Petitioner showed the custom authorities the following Bills of Entry in its ledger book to dispel the suspicion of the Customs Department-

| SNo. | Bill of Entry & Date | Container No. | Assessable Value |
|---|---|---|---|
| 1. | 5266364 dated 12.10.2019 | MSKU1096949 SUDU6634850 | Rs.3210314 |
| 2. | 5266615 dated 12.10.2019 | MSKU6524119 | Rs.1605157 |
| 3. | 5303582 dated 15.12.2019 | TGHU4674899 MSKU8013669 | Rs.2883446 |
| 4. | 5309933 dated 16.10.2019 | MSKU0254778 | Rs.1511036 |
| 5. | 5312175 dated 16.10.2019 | MRKU4983009 | Rs.1524899 |
| 6. | 5363294 dated 19.10.2019 | MRKU4378780 | Rs.1528069 |

c) The 8 containers were accordingly taken in custody. For investigation, the department, on 01.11.2019 summoned the freight forwarder of M/s Sea Fast Shipping Agency and checked his phone. Incriminating information was found in the phone. Accordingly a *panchnama* was prepared on 05.11.2019.

d) The Department also wrote to the shipping agency i.e. Maersk Line on 04.11.2019 to verify the shipping status of the 8 containers

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containing dry dates for sale in the background of assertion made by the Petitioner stating that the containers had been shipped from Iran.

e) M/s Maersk Line replied *vide* email dated 5.11.2019 stating that the containers were shipped from Karachi Port, Pakistan. Documentary proof i.e. copy of Bill of Lading was annexed to the email.

f) Thereafter, the seized containers were inspected and summons was issued to the Petitioner on 04.11.2019 seeking an explanation about the true origin of these goods.

g) The statement of the Petitioner was recorded under Section 108 Customs Act where he allegedly admitted to the e-mail of Maersk Line confirming the origin of the goods to be from Karachi Port, Pakistan and not Iran. The said statement was later retracted by the Petitioner.

h) The Customs Department arrived at the conclusion that the Petitioner had deliberately suppressed the origin of the containers containing packaged dry dates for evading customs duty as goods imported from Pakistan carry a higher import duty as against imported goods from Iran which have a lower rate of import duty.

i) The department therefore finalized the amount of duty levied on the consumable goods imported from Pakistan as Rs.3,40,41,873/- and booked the Petitioner under Section 135 Customs Act and arrested him on 05.11.2019 whereafter he was sent to Judicial custody. The Petitioner was released out on bail on 20.12.2019.

j) The Respondent herein preferred an application under Section 451 CrPC before the CMM, Patiala house seeking disposal of the perishable seized goods i.e. dry dates. The Petitioner herein contended

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before the Ld. CMM that the Court did not have jurisdiction under the Customs Act to direct the disposal of the imported seized goods. The Ld. CMM vide order dated 16.12.2020 passed the impugned order, directing the disposal of seized goods by relying on the verdict of the Supreme Court in Sunder Bhai Amba Lal Desai v. State of Gujarat, **(2002) 10 SCC 283,** which states that perishable goods seized by the customs should be disposed of in a quick and efficacious manner.

3. Mr. Priyadarshi Manish, Ld. Counsel appearing for the petitioner submitted that the Ld. CMM did not possess the jurisdiction to pass an order to dispose of the imported goods under Section 451 of the Cr.P.C. He submitted that the Customs Act is a self-contained code which governs the importing of goods in the country and has its own special powers, procedures, regulations and rules which have been arrived at pursuant to its unique objective it aims to fulfill; he argued that Customs Act being a special legislation, the provisions of the Cr.P.C would be inapplicable. He submits that any disposal of the goods should have been in accordance with Chapter XIV of the Act which prescribes for confiscation of goods and the levying of penalties and punishment and any rule made in pursuance thereunder.

4. He submitted that Section 451 of the Cr.P.C authorizes a criminal court to dispose of the property which is subject to decay, he would contend that a criminal court does not have any jurisdiction under the Customs Act. He states that the Customs Act is self contained and only the authorities under the Customs Act have the jurisdiction/power to dispose of the goods confiscated under the Customs Act. He submits that order directing disposal

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could not have been passed either under Section 451 CrPC or Section 122 Customs Act.

5. He further argued that, without prejudice to his other contentions, under Section 451 Cr.P.C the criminal court can only make such order during a trial or pending the conclusion of the inquiry under Cr.P.C. It is submitted that a trial going on under the Cr.P.C prior to the disposal of the goods as per the mandate of Section 451 Cr.P.C. Reliance was placed upon Hardeep Singh v. State of Punjab, **AIR 2014 SC 1400,** which defines the term 'inquiry' and draws its distinction from 'investigation' done by any investigating agency.

6. He submitted that the adjudicating authority failed to see that the petitioner had already waived his right to the show-cause notice being served on him and the adjudicating order was passed by giving option to the Petitioner to redeem the goods after payment of 12.5 lakh. He would, therefore, contend that the petitioner has been given the option to redeem the goods after payment of Rs.12.5 lacs and there was no question of disposing the goods under Section 451 Cr.P.C.

7. In support of his submissions the Ld. Counsel for the Petitioner has relied upon the judgment of this Court in Directorate of Revenue Intelligence V. M/s PRK Diamonds Pvt. Ltd, **(Crl. MC No. 4316/2016)** wherein this Court has held that the goods confiscated under the Customs Act cannot be disposed of under Code of Criminal Procedure.

8. It is stated by the learned counsel for the petitioner that a notice has to be issued under Section 451 Cr.P.C before confiscation of the goods within six months. He would state that the adjudicating authority has imposed a penalty of Rs.29,50,000/- under Section 112(a) (ii) of the Customs Act and

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Rs.10,00,000/- under Section 114A of the Customs Act. He would state that there is a direction of the authority that in any way it is open to the petitioner to pay the fine and get the goods redeemed and therefore, goods ought not to have been sold because once the goods sold can never be recovered back. He would further state that the petitioner cannot be saddled twice i.e. (a) impose penalty and (b) sell the goods. He would state that the action can be taken by the Customs Department only under Section 135 of the Customs Act and goods cannot be sold by invoking provision of Section 451 Cr.P.C which postulates an inquiry or trial under the Cr.P.C and which cannot be invoked for dealing with the goods which have been confiscated under Customs Act.

9. *Per Contra*, Mr. Satish Aggarwala, Sr. SPP vehemently opposed the submissions of the Petitioner. He submitted that firstly the consignment of goods imported into India was falsely shown as being imported from Iran and was imported in India from Karachi, Pakistan to evade payment of the applicable customs duty on goods arriving in India from Pakistan. He submitted that the bills shown by the Petitioner showing the origin of the seized goods (dry dates) as Iran were false and that the Petitioner had deliberately mis-declared the origin of the country from where it was imported and this has been carefully verified by the department from M/s Maersk Line Pvt. Line which was the shipping agent of the goods. He submitted that the Petitioner is guilty directly of Section 46(4) of the Customs Act which warrants an importer to subscribe to a declaration as to the correctness of the contents of the bill of entry, and such a violation would entail confiscation of goods under Section 111(m) and be subject to a penalty under Section 112(a) (ii) of the Act and also liable for higher penalty

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under Section 114A which specifically provides for penalty to be imposed for mis-declaration of imported articles and knowing suppression of material information about the articles, and such penalty would be commensurate or more with the interest levied on the misrepresented goods.

10. The Ld. SPP submitted that the Petitioner was given an opportunity to pay the penalties and de-seize the confiscated imported goods pursuant to being served a show-cause notice, he submits and it has been conceded by the Petitioner that he waived his right to receiving a show-cause notice and that he would contest the confiscation by the department. He further submitted that the Petitioner's statement was recorded under Section 108(3) of the Act wherein the Petitioner was confronted about the containers that were marked differently from what it contained inside and the Petitioner admitted that the origin of the goods was not from Iran, therefore stating that bills produced in support of were ingenuine and forged. The Ld. Counsel also admits that the statements of the Petitioner of 5.11.2019 and 15.11.2019 stand retracted.

11. The Ld. SPP argued that the Petitioner had in statement had stated to the Respondent that he would require some time to think about payment of 200% BCD Fine which is attracted to the goods being imported from Pakistan as per CBIC Notification No. 05/2019 dated 16.12.2019 and no response to that effect was received from the Petitioner about the payment of 200% penalty/fine on the goods. Further, Mr. Aggrawala submitted that the disposal of the goods was not under the provisions of the Cr.P.C, he submits it was done in accordance with the Disposal Manual of 2019 that is made applicable the Customs Act. He advanced that the Disposal Manual itself mandates the procedure of disposal or discarding of goods is to be done as

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per the process laid down under Section 451 CrPC. He submitted that the goods in question were dry dates which have a very short shelf life and are perishable in nature which require it to be consumed within a period of time. He submits that dry dates fall under Category 1 of the Disposal Manual, which are goods which need to be disposed of immediately after being seized. He emphatically argued that disposal of the confiscated goods was not the first option but the last choice after giving an opportunity to the Petitioner to deposit the penalty and after giving chances to explain cogently the circumstances to prove the authenticity of the bills/certificates of origin.

12. The learned SPP relied on the following judgments:

<u>Manjit Singh v. State</u>, **CRL. M.C. 4485/2013** - Delhi High Court.

<u>Sunderlal Ambalal Desai V. State of</u> Gujarat **(2002) 10 SCC 283**

13. Heard arguments of both parties, perused the case record and the case laws filed in support of the rivaling contentions.

14. The Customs Act provides for a comprehensive framework governing the import and export of goods, articles into the country with an objective to curb smuggling of goods into the country through seaports and airports. The Customs Act is a complete code in itself and it being a special legislation, it has its own powers, procedures, rules and mode of operation including the powers of arrest, investigation, examination of persons, inspection, seizure, confiscation, adjudication, imposition of penalty, appellate mechanisms, the settlement commission. These reasons in itself confer vast powers on the customs department for it being a statute which aims at preventing the proliferation of a parallel economy which is askew from the normal

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economy and which allows the spreading of all illegal and banned activities including terrorism, illegal money transfers, trafficking of vulnerable groups and the derailment of the normal economy thereby shifting the balance of demand and supply and creating an artificial shortage or excess of goods.

15. While dealing with the Foreign Exchange Regulation Act, the Supreme Court in CBI V. State of Rajasthan, **(1996) 9 SCC 735,** held that the Foreign Exchange Regulation Act was a self-contained code which was governed by its special trappings and that a police officer could not make an application under Section 155(2) CrPC to the Chief Judicial Magistrate to obtain permission to investigate offences committed under the FERA. The Court held as follows:

> *"**28.** FERA is a special legislation relating to regulation of foreign exchange. FERA is also a Central legislation enacted at a later point of time than the DSPE Act which was enacted in 1946. In our view, Sections 4 and 5 of the Code of Criminal Procedure will not come in aid of the investigation of the offences under FERA by a member of police force like an officer of DSPE in accordance of the Criminal Procedure Code. Sections 4 and 5 of the Code of Criminal Procedure provide that in the absence of any provision regulating investigation, inquiry or trial of non-IPC offences i.e. offences under any other law, the investigation, inquiry and trial shall be in accordance with the Code of Criminal Procedure. But FERA is a self-contained code containing comprehensive provisions of investigation, inquiry and trial for the offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorised by the Central Government under FERA to search, confiscate, recover, arrest, record statements of witnesses, etc. **FERA contains provisions for trial of the offences***

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***under FERA and imposition of punishment for such offences. FERA, being a special law, containing provisions for investigation, enquiry, search, seizure, trial and imposition of punishment for offences under FERA, Section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FERA.”***

(Emphasis supplied)

16. This Court in Directorate of Revenue Intelligence V. M/s PRK Diamonds Pvt. Ltd. (supra), has at great length dealt with the question that is posed by the present case. It was held therein that –

*“**33**. In terms of Section 110(2) of the Customs Act, 1962, it has been specifically laid down that where any goods are seized under Sub-section (1) of Section 110 and no notice in respect thereof is given under clause (a) of Section 124 in the Act of the seizure of the goods, the goods shall be returned to the persons from whose possession they were seized though the Principal Commissioner of Customs or Commissioner of Customs may for the 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 are seized before the expiry of the period so specified.*

***34**. It is thus apparent that in terms of Section 111 of the Customs Act, 1962, all the goods or documents seized under Section 110A may pending adjudication be released to the owner on taking a bond from him in the proper form as the adjudicating authority may require.*

***35**. In terms of Section 111, it has already been observed herein above that the improperly brought imported goods from a place outside India can be confiscated and penalty for improper importation of*

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*goods is imposable under Section 112 of the said enactment. In terms of Section 113 of the Customs Act, 1962, improperly exported goods specified therein are liable to confiscation and Section 114 of the Customs Act, 1962, provides for penalty for attempt to export goods improperly.*

***36**. Under Section 115(2) any conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods is liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself and the proviso to Section 115(2) provides for the imposition of a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be in lieu of the confiscation of the conveyance.*

***37**. In terms of Section 122 of the said enactment where goods are liable to confiscation in terms of Chapter XIV of the Customs Act, 1962, any person liable to a penalty thereon, the confiscation of the penalty may be adjudged without limit by the Principal Commissioner of Customs or Deputy Commissioner of Customs and upto such limit by such officer as the notification specify Section 122A lays down the adjudication procedure.*

***38. In terms of Section 124 of the Customs Act, 1962, a notice is required to be given to the person from whom the goods are seized and proposed to be confiscated which notice has to be given in writing with the proper approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs informing the person from whom the seizure has been made on the grounds on which it is proposed to confiscate the goods or to impose a penalty. In terms***

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***of Section 125 of the said enactment it has been specifically laid down that the officer adjudging at the time of confiscation of the goods may impose a fine in lieu of confiscation as the officer thinks fit. Section 125 of the Customs Act, 1962 provides as follows:***

> ***"125. Option to pay fine in lieu of confiscation.— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. 2[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods.]***

***39. Further more, in terms of Section 126 of the said enactment, goods once confiscated are the property vested in the Central Government and the officer adjudging the confiscation has to take hold the possession of the confiscated goods.***

***40. In terms of Section 127 of the said enactment, the award of any confiscation or penalty under the Customs Act, 1962 by an officer of Customs shall not prevent the infliction of any punishment to which the***

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***person affected is liable under Chapter XVI of the Act or any other law.***

***41. Under Section 128 of the Customs Act, 1962, which falls under Chapter XVI which deals with appeals against order or decision passed under the Act by an officer of Customs lower than the Principal Commissioner of Customs or Commissioner of Customs provides for an appeal to the Commissioner (Appeals) within 60 days of the day of the communication to him.***

***42. Thus it is apparent that the Customs Act, 1962 provides for a complete code in itself in relation to search, seizure, confiscation and release of goods seized in alleged violation of the Customs Act, 1962.***

***43**. Though after confiscation ordered by the adjudicating authority, the confiscated goods become vested in the Central Government in terms of Section 126(1) of the Customs Act, 1962 coupled with the factum that Section 127 of the said enactment provides that the award of any confiscation of penalty under the Customs Act, 1962 by an officer of the Customs shall not prevent the infliction of any punishment to which the person affected there is liable under the provisions of Chapter XVI of the Act and under any other law, makes it apparent that the search, seizure, confiscation and adjudication in relation to the confiscation is de hors the infliction of punishment that may be imposed in terms of the Customs Act, 1962.*

***44**. The factum that the Customs Act, 1962, provides even for an appeal against an order of the adjudicating authority under Chapter XV of the Customs Act, 1962 in terms of Section 129A(a) and provides for an Appellate Tribunal in relation thereto, is significant.*

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*45. Significantly, the Hon'ble Supreme Court in the State of Madhya Pradesh v. Uday Singh: Criminal Appeal 524/2019 by a verdict dated 26.3.2019 has inter alia observed to the effect that vide the Indian Forest Act, 1927, specific provisions have been made for the seizure and confiscation of forest produce and tools and weapons and articles used in the commission of offences punishable under the Indian Forest Act, 1927, which had been infused with a salutary public purpose and that the order of confiscation under the said enactment is subject to an appeal provided under Section 52A and a revision vide Section 52B.*

*****

***48. Taking the same into account it is apparent that the Customs Act, 1962 as observed herein above provides a complete code in relation to the searches, seizures and confiscation of contraband in terms of the Customs Act, 1962 and also provides for the adjudication in relation to the release thereof.***

***49. It is apparent thus at the stage of investigation being conducted by the Customs Officers that the provision of Section 451 of the Cr.P.C., 1973 thus do not operate.***

*****

*54. Thus, it is apparent that despite the non-existence of a specific bar to the jurisdiction of Courts in the Customs Act, 1962 to release of the seized goods during investigation by the Customs Authority, the Trial Court could not have invoked the provisions of Section 451 of the Code of Civil Procedure, 1973 for release of the vehicles in question on superdari in as much as the seizure of the two vehicles in question was not subject matter of any ' inquiry' or 'trial' before the learned CMM at the time of consideration of the prayer for release of the vehicles on superdari. The impugned orders of the learned Trial Court are thus*

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*set aside. The petition Nos. Crl.M.C. Nos. 4316/2016 and 4767/2016 are thus allowed."* (emphasis supplied)

17. The said judgment has been challenged in the Apex Court but the Apex Court has not granted any stay on the said judgment.

18. It emerges from the facts of this case that the Petitioner imported dry dates and mis-stated that the origin of them was Iran for gaining immunity from paying a higher percentage of tax. The Customs Department ascertained the place of deportation of the goods from Karachi Port, Pakistan and rightly seized the goods on finding out that true information had been suppressed for the purpose of duty evasion. Thereafter, the Petitioner was arrested and his statement was recorded where he confirmed the allegations levelled by the Customs Department about deliberate misdeclaration. However, the same was retracted later. The Petitioner was given a show-cause notice to explain his position against the charges that were made and was given an option to redeem the goods after payment of a penalty commensurate with the latest circular issued by Customs And Excise Department determining the rate/percentage of penalty. The Petitioner waived his right to answer the show-cause notice and did not agree to the alternative option of payment a 200% penalty for redeeming the goods. However, the Petitioner told the Respondent that they may re-export the dry dates, import it back which would discharge some extent of the liability on him. This offer was not acceptable to the Respondent and they directed the confiscation of goods and thereafter made an application to the Criminal Court under Section 451 Cr.P.C to dispose of the dates which are a perishable consumable.

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19. The question that arises for consideration herein is that whether the procedure adopted by the Respondent as prescribed in the Disposal Manual 2019 - which is an omnibus rulebook that all agencies and departmental officers of the Central Government which provides for storage, safekeeping, disposal of seized, confiscated, unclaimed and uncleared goods to prevent multiple interpretation from subsequent circulars and notifications which may be conflicting or inconsistent- is correct considering that the Customs Act is a special law and an complete code in its operation.

20. The Disposal Manual 2019 under Chapter 1 lists out the items, goods articles that states as under-

> *"1.1. This Manual prescribes the procedures to be followed by all the field formations under the Central Board of Indirect Taxes & Customs (CBIC) for the disposal of:*
>
> *I. Goods seized under the Customs Act, 1962, the Central Goods and Services Tax, 2017 CGST Act 2017), the Integrated Goods and Services Tax, 2017 (IGST Act 2017) and the Central Excise Act, 1944;*
>
> *II. Goods confiscated under the Customs Act, 1962, the CGST Act 2017, the IGST Act 2017and the Central Excise Act, 1944;*
>
> *III. Goods uncleared/ unclaimed after importation into India and lying in the Customs Area;*
>
> *IV. Mishandled Baggage;*
>
> *V. Goods that involve Time-Expired Bonds; and*
>
> *VI. Goods detained under Section 142 of the Customs Act, 1962.*
>
> *1.2. The procedures prescribed in this Manual are based on the provisions of the Customs Act, 1962, the Central Excise Act, 1944, the CGST Act 2017, the IGST*

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*Act 2017, the Rules and Regulations made thereunder, and other Allied Acts. In case of any inconsistency between these procedures and
the statutory provisions, the later shall prevail.*

*1.3. Whereas this Manual indicates the general procedures to be followed, the concerned Principal Commissioners/ Commissioners may make requisite changes thereto, as may be necessitated by local conditions, keeping in view the spirit of instructions contained in this Manual. These changes may be informed to the Board.*

*1.4. In major Custom Houses, there shall be a separate unit, called the Disposal Unit which should be entrusted with the task of taking-over all goods ripe for disposal from the custodians and dispose of the same by auction or otherwise."*

21. Category 1 of the Disposal Manual, 2019 outlines the goods that have a short life and therefore limited period of usage and the goods imported by the Petitioner fall under this category which is reproduced as under –

*"**2.3.Category-I: Goods to be Disposed of Immediately After Seizure***

*2.3.1. The goods under this category have a very short shelf-life as they are either prone to rapid decay or they become outdated/ obsolete very fast. Some of these goods are liable to deterioration due to drying or humidity. Some others may require special arrangements for their preservation and storage. Some of such goods may be perishable in nature, while some others may have certain expiry date prescribed thereon. Therefore, these goods may be disposed of immediately after seizure, after issue of a Notice to the*

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*owners/ claimant (party) and obtaining orders from the Competent Authority. The goods falling under this category include:*

*i. Fresh flowers;*

*ii. Fresh fruits and vegetables, meat, fish, poultry, eggs and other fresh uncanned/unprocessed food materials; Categories of Goods*

*iii. Cereals, sugar and other grocery items;*

*iv. Beer;*

*v. Medicinal herbs;*

*vi. Cigarettes, bidis, bidi-leaves and tobacco;*

*vii. Livestock;*

*viii. Raw (wet and salted) hides and skins;*

*ix. Salt and hygroscopic substances (other than in sealed containers);*

*x. Petroleum products;*

*xi. Molasses;*

*xii. Newspapers and Periodicals;*

*xiii. Confectionery;*

*xiv. Menthol, Camphor, Saffron;*

*xv. Tea and Coffee;*

*xvi. Cells, batteries and rechargeable batteries; and*

*xvii. Lighters with gas (not having arrangement for refilling), Lighter fuel.*

*2.3.2. The above list is not exhaustive. The Principal Commissioner/ Commissioner in-charge may decide any seized item to be perishable, depending upon its nature and shelf-life, if he deems that prolonged storage may result in deterioration of the goods.*

*2.3.3. Apart from the goods which are likely to deteriorate or perish, the seized goods for which the recurring cost of upkeep or the cost likely to be incurred on the special arrangements required for storage, is disproportionately high (e.g. animals or dangerous goods) may be disposed of after observing the prescribed formalities and after due intimation to*

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*the owner or claimant about the date, time and manner of such disposal."*

22. A perusal of the disposal manual does not indicate that provision under Section 451 Cr.P.C can be invoked for disposal of the goods confiscated under the Customs Act. This Court does not find any reason to differ from the view expressed in Directorate of Revenue Intelligence V. M/s PRK Diamonds Pvt. Ltd. (supra).

23. Therefore, in view of the above, the present petition is allowed and the order dated 16.02.2020, passed by the Ld. Metropolitan Magistrate, Patiala House Court stands quashed and is set aside.

24. Accordingly, the petition is disposed of along with the pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**DECEMBER 21, 2021**
*Rahul*

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