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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 20.07.2022

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W.P.(C) 12409/2021 & CM No.39015/2021

NEERAJ ANEJA

.....Petitioner

Through: Mr Vakul Vardhan Gautam and Ms
Isha Vashisth, Advs.*versus*PRINCIPAL ADDITIONAL DIRECTOR
GENERAL, DRI & ORS.

.....Respondents

Through: Mr Harpreet Singh, Sr. Standing
Counsel with Ms Suhani Mathur,
Adv. for R-1.
Mr Ruchir Mishra and Mr M.K.
Tiwari, Advs. for UOI.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MS. JUSTICE TARA VITASTA GANJU****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This writ petition is directed against the show cause notice (SCN) dated 26.09.2019.
2. Mr Vakul Vardhan Gautam, who appears on behalf of the petitioner, says that the said SCN was amended on 26.03.2021. The petitioner is arrayed as noticee no.12 in the said SCN.
3. The petitioner is an official of the respondents and is still in service. It is not in dispute, that the other noticees' arrayed in the aforementioned SCN (as amended) are all private parties, save and except noticee no.7, i.e., Mr



Vikram Bhasin, who, we are told is also a government official.

4. The allegation against the private individuals is captured, broadly, in the Subject, as well as the narration made in the first paragraph of the SCN dated 26.09.2019. For the sake of convenience, the said parts of the SCN are extracted hereafter:

“Subject : *1. Seizure of gold jewellery weighing 50630 (50580 gms of 22Kt and 50 gms of 24 Kt) grams having market value of Rs. 13,69,43,600/- (Rupees Thirteen Crores Sixty Nine Lakh Forty Three Thousand and Six Hundred only) by DRI (Hqrs.), New Delhi on 24/25.04.2019.*
2. Seizure of 25 foreign origin gold bars weighing 25000 grams, cut pieces of gold bars, gold dust and assorted gold jewellery weighing 26404 grams and silver slabs weighing 44778 grams cumulatively valued at Rs. 14,54,38,757 (Fourteen Crore fifty Four Lakh Thirty Eight Thousand Seven Hundred Fifty Seven only) on 24/25.04.2019.
3. Seizure of 4 cut pieces of gold bar weighing 926 grams and valued at Rs. 32,95,069- (Rupees Thirty Two lakh Ninety Five Thousand Sixty Nine Only) on 15.06.2019- regarding.

*Specific Information received in the Directorate of Revenue Intelligence, Hqrs., New Delhi (hereinafter referred to as 'the ORI') indicated that a company named by M/s Its My Name Pvt. Ltd. is misusing the Advance Authorization Scheme through circular trading of gold jewellery exported under the guise of exhibition from India through hand carry and subsequently smuggling Gold jewellery into India under the garb of re-importing the said jewellery without the required documents and permissions. Intelligence further indicated that an employee of the said company by the name **Sh. Amit Pal Singh**, S/o Sh. Bhupinder Singh, R/o ED-118, First Floor, Tagore Garden, Delhi, having Indian Passport No.Z4857412 would arrive at IGI Airport, New Delhi on 24.04.2019 from Dubai by Air India flight no. IX 142 and*



would be carrying huge quantity of Gold jewellery for illicit import into India.....”

5. Mr Gautam says that insofar as the writ petitioner is concerned i.e., noticee no.12, the allegation against him is contained in paragraphs 17, 28.11 and 40 of the SCN.

5.1 It is contended, that broadly, the only allegation against the petitioner is that he did not follow the Standard Operating Procedure (SOP) dated 29.03.2016.

6. Mr Gautam submits that the responses received to the RTI applications dated 23.07.2021 and 05.08.2021 demonstrate that during the period in issue, the said SOP was inoperable.

6.1. To complete the narration, it may also be relevant to note that the responses to the aforementioned RTI applications are dated 16.08.2021 and 27.08.2021.

7. In this context, Mr Gautam has drawn our attention to the two shipping bills, *qua* which allegations have been raised *vis-à-vis* the noticees arrayed as parties in the aforementioned SCN. These shipping bills are dated 20.02.2019 and 13.03.2019.

8. We may also note, (something which Mr Harpreet Singh, who appears on behalf of the respondents/revenue, has brought to our notice) that the private individuals (who, as indicated above, are noticees' in the aforementioned SCN), have filed a writ petition i.e., W.P.(CrI.) No.821/2021, titled ***Gopal Gupta v. Principal Additional Director General, Directorate of Revenue Intelligence***, which is pending adjudication before a Learned Single Judge of this Court.

9. We are told that one of the issues which has been raised by the writ



petitioners in that matter, concerns the jurisdiction of the officers to issue the SCN.

9.1. This ground is founded on the judgment of the Supreme Court rendered in ***Canon India Private Limited. v Commissioner of Customs***, 2021 SCC OnLine SC 200.

9.2. We may note that a review petition i.e., Review Petition (C) No.400/2021 has been filed in respect of that judgment.

9.3. Notice has also been issued in another Special Leave Petition i.e., SLP(C) No.1513/2022, titled ***Union of India vs. Godrej and Boyce Manufacturing Co. Ltd.***

9.4. Besides this, *via* the Finance Act, 2022, amendments have been made, which, according to the respondents, would cure the defect that was pointed by the Supreme Court in the ***Canon India*** judgement.

9.5. It is not in dispute that in certain matters pending before the Supreme Court, challenge has also been laid to the amendments brought about in the Customs Act, 1962 *via* the Finance Act, 2022. Therefore, this aspect of the matter is also receiving the attention of the Supreme Court.

10. That apart, W.P.(Crl.) No. 821/2021, to which reference was made hereinabove, we are told, is listed on 30.08.2022, along with an application i.e., Crl.M.A.No.12498/2022, for vacation of interim order dated 12.04.2021.

10.1. It is relevant to note that in the counter-affidavit filed in the above-mentioned writ petition, averments have been made by the respondents, in rebuttal, *vis-à-vis* the SOP dated 29.03.2016. These are captured on page 2 of the counter-affidavit. (See page 673 of the case file.)

10.2. Although, no rejoinder has been filed, Mr Gautam has attempted to



explain that the stand taken by the respondents would not withstand scrutiny.

11. In our opinion, the matter requires adjudication.

12. Mr Gautam has indicated to us that pursuant to the order dated 29.10.2021, a reply dated 20.11.2021 to the SCN has been filed by the writ petitioner.

13. Mr Gautam has contended that the pendency of the adjudication of the impugned SCN is impeding the progress of the petitioner in service. The submission is, that the petitioner is not being considered for promotion to the post of Assistant Commissioner.

13.1. We are told that although a DPC was convened in December 2021, the writ petitioner was not considered.

13.2. Mr Gautam also says that the writ petitioner has only one and a half years of service left and will reach the age of superannuation on 31.10.2023.

14. Mr Gautam has, in this context, drawn our attention to the representation dated 07.01.2021 made by the petitioner to the respondents. (Appended on page 537 of the case file.)

15. Therefore, given the aforesaid backdrop, Mr Gautam says that the official respondents could consider the following:

- (i) Expedite the adjudicatory process *vis-à-vis* the writ petitioner, given the fact that the charges against him fall in a narrow compass.
- (ii) Consider the writ petitioner's representation for convening a Review DPC.

16. Mr Harpreet Singh says that both requests will be considered as per law and having regard to the facts obtaining in the matter.

17. Given this position, Mr Gautam says that based on the stand taken by



the respondents, the writ petition can be disposed of in the aforesaid terms.

17.1. It is ordered accordingly.

18. Needless to add, the representation made by the writ petitioner *vis-à-vis* his promotion, the same will be dealt with expeditiously, though, not later than three weeks from the date of the receipt of the order.

19. The respondents will ensure that the representation is placed before the concerned authority.

20. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 20, 2022/aj

[Click here to check corrigendum, if any](#)