



2023:DHG:9291-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 22nd December, 2023*

+ **W.P.(C) 1166/2021 & CM APPL. 3284/2021**

**M/S SHREE GOLD ART PRIVATE LIMITED THROUGH
MR MANINDRA SAMANTA** Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R.K. Handoo, Mr. Yoginder Handoo,
Mr. Aditya Chaudhary, Mr. Garvit Solanki &
Mr. Ashwin Kataria, Advs.

For the Respondents : Mr. Aditya Singla, SSC with Ms. Peehu
Singh Hooda & Mr. Mahesh Agarwal, Advs.
Mr. Vikrant N. Goyal, Mr. Rohit Gupta, Ms.
Tania Sharma & Mr. Mrutunjay Mishra,
Advs. for UOI
Mr. Chetan Sharma, ASG with Mr. Asheesh
Jain, CGSC & Mr. Gaurav Kumar, Advs. for
R3.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

INTRODUCTION

1. The petitioner, M/s. Shree Gold Art Pvt. Ltd., has filed the present writ petition seeking following prayers:

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“a) Issue writ of mandamus or any other appropriate writ, direction or order quashing the detention order dated 17.08.2020, order dated 22.12.2020 whereby the legally imported gold of 53 kg has been seized and the panchnama of seizure dated 28.12.2020 whereunder the seizure of 53 kg. gold has been made.

b) Pass an appropriate writ, order or direction directing the Respondent DRI to release the detained / seized 53 Kgs gold bars legally imported by the Petitioner company on 13.08.2020 forthwith to the Petitioner company; and/or

c) Pass an appropriate writ, order or direction directing the Respondent DRI to de-freeze the bank accounts in HDFC Bank, Karol Bagh with A/c no 50200034032801, Yes Bank, Kirti Nagar with A/c no 034081300000450, United Bank of India with A/c no 0535050016199 and Punjab National Bank, Rajinder Nagar with A/c no 0629002100144490 of the Petitioner company; and/or

d) Pass an appropriate writ, order or direction directing the Respondent No.3, DGFT to re-validate/extend the Licence of the Petitioner as per provisions of FTD Act & Rules without being influenced by the directions of DRI and grant waiver/relaxation of the composition fee, if applicable for such re-validation/extension; and/or

e) Any other order which the Hon'ble Court deems fit in the facts and circumstances of the case.”

BRIEF FACTS

2. The petitioner is a company engaged in the business of buying, selling, manufacturing, exchanging, assembling, altering, import of Gold and export of Gold ornaments under the Advance Authorization Scheme. On 19.02.2019, the Directorate General of Foreign Trade (Respondent No.3/ DGFT) authorised the petitioner under the said scheme for import of duty-free Gold Bars. In terms of Para 4.35 of



Handbook of Procedures, 2015-2020, the premises where goods were to be processed was declared as 40/4019, Reghar Pura, Karol Bagh, New Delhi.

3. On 13.08.2020, the petitioner received a consignment of 53 Kg of Gold Bars, imported under B/E Nos. 8461348 and 8461516, which was released from customs after examination by the proper officer. On the same day, officers of DRI searched the premises of the petitioner and its director, Mr. Manindra Samanta, for verification of duty-free imported gold at the declared premises, that is, 40/4019, Reghar Pura, Karol Bagh, New Delhi. The search continued till the next day.

4. Directorate of Revenue Intelligence (Respondent No.2/ DRI) vide letter dated 14.08.2020 informed DGFT that it was investigating a case of diversion of duty-free imported gold under the Advance Authorization Scheme qua the petitioner, and requested DGFT to not extend the time for fulfilment of export obligation, if requested by the petitioner, without obtaining comments from it. The same was intimated to the petitioner by DGFT on 14.10.2022 vide a Deficiency Letter in reply to the petitioner's application for revalidation of its authorization.

5. The DRI addressed another letter on 14.08.2020 to DGFT requesting it to hold the export consignment of any jewellery belonging to the petitioner for examination and sampling. Only one consignment of Rs.2,27,291 was brought to the notice of the DRI, which was deemed by it to not be examinable.



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6. On 17.08.2020, another search was carried out at the declared premises. It was noted that the DRI had information that 53 kg of gold imported on 13.08.2020 under the Advance Authorization Scheme, which was not found during the search on 13.08.2020 / 14.08.2020, was then stored in the premises. During the search, 53 kg gold bars were found in the chest kept at the ground floor of the declared premises. An order, for detaining the said gold bars weighing 53 kg, was passed on 17.08.2020. It was mentioned that as per the stock position, the balance stock of duty free imported gold should have been 420.228 Kg, whereas only the 53 Kg gold, imported on 13.08.2020, was found in the stock. The 53 kg Gold Bars were placed in the chest, and the chest was sealed. The custody of the detained gold and keys was handed over to Mr. Manindra Samanta, the Director of the petitioner.

7. Mr. Manindra Samanta rendered a statement under Section 108 of the Customs Act, 1962 (hereafter '**Customs Act**') on 18.08.2020 that he had imported the said duty-free gold under Advance Authorisation Scheme, and handed over the same to individuals in Delhi on instructions from a person based out of Dubai, United Arab Emirates. He was arrested on the same day on the allegation that there was a diversion of the goods and thus an evasion of customs duty. He was granted bail by the learned CMM, Patiala House Court, on 25.09.2020.

8. On 20.08.2020, the DRI directed to put the following bank accounts of the petitioner on debit freeze under Section 110 (5) of the



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Customs Act till 20.02.2021, after due approval of the learned Additional Director General, DRI, Lucknow:

- a. HDFC Bank, Karol Bagh with A/c no. 50200034032801,
- b. Yes Bank, Kirti Nagar with A/c no. 034081300000450,
- c. United Bank of India with A/c no 0535050016199, and
- d. Punjab National Bank, Rajinder Nagar with A/c no 0629002100144490

9. The DRI only extended the debit freeze, under Section 110 (5) of the Customs Act, to the petitioner's bank account in Yes Bank on 19.02.2021. Thereafter, a Seizure Order was passed on 22.12.2020, under Section 110 of the Customs Act, thereby seizing the 53 kg Gold Bars which were detained by the Detention Order dated 17.08.2020. A Panchnama dated 28.12.2020 was also drawn in respect of the Seizure Order dated 22.12.2020.

10. Thereafter, an order under Section 110(2) of the Customs Act was passed on 16.02.2021 by the DRI, extending the period of issuance of Show Cause Notice by a further period of six months till 16.08.2021. A Show Cause Notice was thereafter, during the pendency of the present writ petition, issued on 11.08.2021 by the learned Assistant Commissioner of Customs (Imports) to the petitioner, along with M/s Subra International Pvt. Ltd. and M/s. Balgopal Jewellers Pvt. Ltd. In regards to the petitioner, it was alleged that 53 Kg Gold was kept outside the declared premises with the sole intention of diversion, as was allegedly done by the petitioner in the past. It was, therefore, proposed



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that the 53 Kg gold imported duty free under Advance Authorisation Scheme was liable for confiscation under Section 111(o) of the Customs Act. In addition, penalties were also proposed to be levied.

11. Aggrieved by the seizure of the 53 Gold Bars by the DRI and the freezing of its bank accounts, the petitioner preferred the present writ petition.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER

LEGALLY IMPORTED AND CUSTOMS CLEARED GOODS OF 53KGS

12. Mr. R.K Handoo, learned counsel for the petitioner, assailing the impugned detention order dated 17.08.2020 and seizure dated 22.12.2020 executed on 28.12.2020, vehemently urged that the said action on the part of the respondent DRI is without jurisdiction, arbitrary and contrary to the provisions of the Customs Act.

13. He submitted that the seizure of legally imported 54kgs gold bars which were cleared by the Proper Officers of Customs on 13.08.2020 is *ex facie* erroneous. He contended that the goods cleared by the Customs ceased to be “imported goods” under section 2(25) and 2(26) of the Customs Act and therefore cannot be liable for seizure. He stated that clearance by Proper Officer is a quasi-judicial order and hence, cannot be reversed by DRI officer by way of detention/seizure under the Customs Act.



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14. He submitted that deputy Director DRI is not a 'proper officer' as envisaged under section 2(34) of the Customs Act. The detention and seizure of impugned goods by the Deputy Director is arbitrary and illegal.

15. He submitted that the existence of “reason to believe” under section 110 of the Customs Act, is necessary to make such goods liable for confiscation. He stated that there was admittedly no “reason to believe” for seizure in respect of the gold bars and thus could not therefore be seized under section 110 of the Customs Act.

16. He further submitted that notwithstanding illegal seizure, the Show Cause Notice dated 11.08.2021, issued by Assistant Commissioner of AIR Customs is invalid since, it got issued only to be amended by a corrigendum dated 27.04.2022, substituting the issuing authority to issue Show Cause Notice by Principal Commissioner, Air Customs, Imports, Delhi. Hence, the initial Show Cause Notice dated 11.08.2021 was invalid and no show cause notice was issued within the statutory period of 6 months. He contended that the extension accorded by the Additional Director General, DRI who was neither the Proper Officer nor competent to render extension of further six months is *void ab-initio*.

17. He submitted that while the period for discharge for export obligation had not expired and was extended by 6 months due to COVID period, the DRI Noida arbitrarily claimed violation of “Actual User Conditions” by alleging that though the goods were imported, were not



found at factory premises. He further stated that the period for discharge of export obligations was subsisting and extended by government. He stated that violation of actual user condition can be alleged if there is sale and not temporary custody/possession as held by Courts.

18. Learned counsel further submitted that the petitioner had subsisting period for export obligation, which was rendered nugatory by arbitrary action of Respondent DRI along with DGFT in cahoots with the banks only to come out with false allegations of alleged diversion and non-discharge of export obligations.

19. The learned counsel submitted that DRI, Noida had neither territorial jurisdiction nor functional jurisdiction on goods cleared in Customs area, Delhi in terms of Sections 2, 4, 5, 47 and 122 of Customs Act. The claim of DRI, Noida to have all India Jurisdiction is fallacious as there was no “cause of action” and illegal seizure of the cleared goods by DRI.

Arguments advanced on behalf of the respondents:

20. Mr. Aditya Singla, Senior Standing Counsel for the DRI countered the averments made by the petitioner and submitted that a preliminary scrutiny of their records revealed that there was a diversion of duty-free gold in the petitioner’s company. The petitioner violated the conditions under the Advance Authorisation by fraudulently diverting the duty-free imported gold in the domestic market and not utilizing the same for export of the manufactured jewellery, thereby evading the duty payable.



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21. He submitted that on scrutiny of the record, the gold was shown to be issued to various persons under issue voucher. The addresses on the issue vouchers were 40/4910 and 40/4914, Reghapura, Karol Bagh, however, none of the persons were found to be present in the premises during the search conducted on 13.08.2020, nor any quantity of gold was found in any shape, that is, pure gold, work in progress stage or jewellery stage. Further, no manufacturing facility / units / artisans were found at any of the declared premises.

22. The learned counsel submitted that during the search conducted on 13.08.2020/14.08.2020, the seized gold bars weighing 53 kgs were not found at the premises of the petitioner company. He relied upon the voluntary statement of Sh. Umakant Jha wherein he stated that the 53 kgs of gold was cleared from Delhi Air Cargo on 13.08.2020 at about 9.00 p.m. The said 53 kgs of gold (detained on 17.08.2020) was kept outside the declared premises and subsequently placed in the locker / almirah of the petitioner company, to show his *bona fide* after the search conducted by the respondent / DRI.

23. The learned Standing Counsel for Respondent no. 3 / DGFT submitted the petitioner had not applied for Export Obligation Extension in respect to Advance Authorisation, and the request for revalidation with respect to Advance Authorisation Licence no. 0510409693 was rejected on grounds of public notice dated 26.09.2019.



ANALYSIS

24. In terms of Section 110(5) of the Customs Act, the attachment of the bank account cannot continue beyond the period of six months, the same can be extended by another period of six months in terms of proviso to Section 110(5). The connected writ petitions W.P.(C) No. 2571/2021 and W.P(C) No.2042/2021 filed by M/s Subra International Pvt. Ltd. and M/s. Balgopal Jewellers Pvt. Ltd. respectively were disposed of by separate orders dated 17.08.2023, noting that prayer in relation to defreezing of the accounts is academic as the orders freezing their respective bank accounts were no longer operative due to efflux of time. The petitioner's bank accounts were initially attached from 20.08.2020 till 20.02.2021. The attachment was extended in relation to one bank account in Yes Bank till 20.08.2021. The order of attachment of bank accounts, thus, has ceased to be operative with efflux of time, and therefore, no order is required to be passed in regard to the prayer seeking defreezing of the bank accounts of the petitioner.

25. In regard to the contention that the goods could not have been detained by the order dated 17.08.2020, we agree with the arguments raised by the learned counsel for the petitioner. Section 110 of the Customs Act gives the power to a Proper Officer, in case he has reasons to believe that any goods are liable to confiscation under the Act, to seize such goods. However, the Proper Officer does not have any power to detain any goods pending passing of any order for seizure.



Admittedly, the respondents had passed an order for seizure of gold under Section 110 of the Customs Act only on 22.12.2020.

26. Section 110 of the Customs Act authorises the Proper Officer to seize goods which are liable for confiscation under the Customs Act. However, the power does not extend to detention of such goods without passing any order of seizure. The power of search and seizure necessarily has to be exercised strictly in terms of the statute and only if the necessary conditions are satisfied. It is an admitted case that DRI had passed the order for seizure for the first time on 22.12.2020.

27. If the officer concerned does not have any reason to believe that the goods are liable for seizure, he cannot be allowed to detain the said goods pending the formation of reasons to believe. Action for search and seizure can only be taken when the Proper Officer has reason to believe that any goods are liable for confiscation. The power to detain goods cannot be exercised on an apprehension that the assessee might have indulged into certain activities in violation of provisions of the Act.

28. It is not denied by the respondent that the order dated 17.08.2020, detaining the gold, was not passed under Section 110 of the Customs Act. The same was passed for the first time on 22.12.2020. Admittedly, there is no provision in the Customs Act, which empowers the officer to detain the goods before ultimately seizing the same under Section 110 of the Customs Act. The power available to the officer is to be exercised in terms of the procedure contemplated under the Customs Act. It is settled law that if a statute provides for a thing to be done in a particular



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manner, then it is to be done in that manner alone and in no other manner. (Ref : ***Chandra Kishore Jha v. Mahavir Prasad and Others : (1999) 8 SCC 266***)

29. However, the reason that the gold was detained without any authority of law would not entitle the petitioner for the release of the said gold at this stage. The Seizure Order was admittedly passed on 22.12.2020. In the said order, the respondents have recorded categorical reasons.

9. Analysis of resumed records have revealed that during the period from 10.06.2020 to 10.08.2020, M/s Shree Gold Art Pvt. Ltd., has imported 380.50 KG of gold duty free under Advance Authorisation No. 0510409693 dated 19.02.2019 under cover of 19 Bills of Entry valued at Rs.174.48 Crore, whereas this company made last export in Pre-lock down period on 20.03.2020. After that it has made exports on two dates only i.e. 30.06.2020 and 07.08.2020. On these dates, 14.41KG and 26.27KG of gold jewellery was exported respectively. No person engaged in manufacture of jewellery was found present in any of the premises on the dates of searches. The persons to whom the gold have been shown issued on Vouchers for Job Work have also not been found available at any of the declared addresses. Moreover, most of these persons are relatives of Mr. Manindra Samanta (Director and Owner of Company), who do not appear to be involved in Jewellery manufacturing on job work basis. It has also emerged that Artisans who were reportedly manufacturing jewellery in these premises left to their native places during lockdown and no evidence of their return till 13.08.2020 have been recovered or submitted by company so far.

10. In view of the above facts, it appears that on 13/14.08.2020, this 53KG Gold (detained on 17.08.2020 by DRI) was kept outside the declared premises with the sole intention of diversion as done in past and was placed in the Locker (Chest)/Almirah of M/s Shree Gold Art. Pvt. Ltd., by Mr Manindra Samanta to show his bonafide after DRI search on 13/14.08.2020. Shri Manindra Samanta has admitted that

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he has imported duty free gold imported under Advance Authorisation No. 0510409693 dated 19.02.20219 for one Dubai based person and has handed over this Gold in India instead of use in manufacture of export goods. Neither Shri Manindra Samanta nor his family members/staff have disclosed anything about the persons to whom this gold have been sold/handed over. In view of above, it appears that said 53 KG Gold is liable for confiscation under Section 111(o) of the Customs Act, 1962 since there has been repeated violation of the exemption notification for the Advance Authorisation No. 0510409693 dated 19.02.20219.

11. Further, it appears that the request of Mr. Manindra Samanta Vide letter dated 06.10.2020 for release of gold in installments and payment of duty out of the sale proceeds thereof seems to be a cover up for his wrong doings in the past. M/s Shree Gold Art Pvt. Ltd., had diverted/sold 367.160 Kgs Gold Bars valued at Rs. 168,37,73,307/- having duty forgone/saved amount of Rs. 27,38,02,587/-, which is to be recovered from the company. Neither the company M/s Shree Gold Art Pvt. Ltd., has assets nor bank credit limits to pay off the duty evaded in past.

12. Therefore, in view of the facts stated above, I, Mudit Rai, Deputy Director, DRI, Noida, hereby seize 53KG Gold (53 Gold bars) having cumulative assessable value of INR 24,97,17,450/- (Twenty Four Crore Ninety Seven Lakhs Seventeen Thousand Four Hundred Fifty only), imported under Bill of Entry No. 8461348 dated 13.08.2020 (for 31KG) and Bill of Entry No. 8461516 dated 13.08.2020 (for 22KG) by M/s Shree Gold Art Private Limited as per details given in attached annexure-A, under Section 110 of the Customs Act, 1962.”

30. In the present case, it is alleged that the Advance Authorisation issued to the petitioner permitted it to import 1000 kg of gold bars against which, the mandated export obligations were export of 1062.701 kg of plain jewellery and articles. The petitioner had imported 649 kg of gold and had exported 228.830 kg of gold. The balance stock of gold was not found in the declared premises and the 53 kg of gold, which was detained on 17.08.2020, was also not found during the search conducted

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on 13.08.2020 / 14.08.2020. Most of the persons to whom gold have been issued for job work, are stated to be close relatives of Mr. Samanta, and it is alleged that they were not found in the respective addresses. The declared premises were also found to be not having adequate equipment to manufacture the quantity available in the time frame as mandated in the Advance Authorisation. It was, thus, alleged that the gold, which was found in the premises, is liable for confiscation since the condition for import, as required under the Handbook of Procedures and Advance Authorisation, is not satisfied. The respondents have relied upon Section 111(o) of the Customs Act, which reads as under:

“111. Confiscation of improperly imported goods, etc.

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(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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31. Therefore, it cannot be contended that the order was passed without any reason to believe. It is settled law that the Court, while exercising writ jurisdiction, is not to adjudicate on the sufficiency and merits of the reasons. The same have to be adjudicated in the appropriate proceedings. The Court has to only see whether there is some material on the basis of which the concerned Department had taken an action. The sufficiency or correctness of the material is not to be considered by the courts exercising power under Article 226 of the Constitution of



India. It is always open to the assessee to contest that the assumption and allegation, which were the basis of the action or issuance of the show cause notice, were erroneous.

32. It is relevant to note that after the Seizure Order dated 22.12.2020 and during the pendency of the present writ petition, Show Cause Notice was issued on 11.08.2021. It was alleged as under:

“29.5 The Advance Authorisation No 0510409693 dated 19.02.2019 issued to M/s Shree Gold Art Pvt. Ltd permits import of 1000 Kg Gold Bars against which mandated export obligations were export of 1062.701KG of Plain Jewellery and articles, Ornaments, Studded colored Gem stone, any jewellery/articles manufactured by a fully mechanized process and un-studded and Gold medallions and coins. M/s Shree Gold Art Pvt. Ltd has so far imported 649 Kgs of 24 Ct Gold and the quantity of jewellery exported so far contained 228.830 Kg of 24 Ct Gold. Out of remaining 420.160 Kgs, only 53 Kgs gold was found store in the premises on 17.08.2020. Remaining 367.160401 Kgs was neither found at any of the premises belonging to the company or purported job workers nor its whereabouts have been disclosed by Manindra Samanta or its family or company officials.

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26.1 On 13/14.08.2020, 53KG Gold (detained on 17.08.2020 by DRI) was kept outside the declared premises with the sole intention of diversion as done in past and was placed in the Locker(Chest)/Almirah of M/s Shree Gold Art. Pvt. Ltd., by Mr. Manindra Samanta to show his bonafide after DRI search on 13/14.08.2020 in view of submission of Shri Manindra Samanta that he has imported duty free gold imported under Advance Authorisation No. 0510409693 dated 19.02.20219 for one Dubai based person and handed over this Gold in India to some persons instead of use in manufacture of export goods.

26.2 Neither Shri Manindra Samanta nor his family members/staff disclosed anything about the persons to whom this duty-free gold



have been sold/handed over. Further, it appeared that the request of Mr. Manindra Samanta vide letter dated 06.10.2020 for release of gold in installments and payment of duty out of the sale proceeds thereof was nothing but a cover up for his wrong doings in the past. Neither the companies of Mr. Manindra Samanta, has assets nor bank credit limits to pay off the duty evaded in past.

29.7 Most of the persons to whom gold have been shown issued for job work are in fact close relatives of Ms. Manindra Samanta and were not present at the respective addresses during the period March 2020 to August 2020. The declared manufacturing premise of the company was not found having adequate equipment to manufacture the quantity of jewellery in the time frame as mandated in the Advance Authorizations.

29.8 There has been repeated violation of the conditions of exemption notification by these companies.”

33. There is *prima facie* some merit in the arguments advanced by the learned counsel for the petitioner that 53 kg gold bars, at the time of detention, were found in the declared premises and, thus, could not have been seized. The said gold was cleared from customs in late hours of 13.08.2020. The said gold was safely kept by the principal officers of the petitioner company. The gold could not be brought inside the declared premises because a search was being conducted during the relevant time on 13.08.2020 / 14.08.2020. However, it was brought inside immediately thereafter. At this stage, it is not relevant to consider whether the petitioner would ultimately succeed. The arguments raised require adjudication of facts. At the initiation stage, the only question to be seen is whether a reasonable belief was formed on the relevant material. Whether the allegations would conclusively prove case against the assessee is not material. The same is in the realm of subjective



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satisfaction, which at this stage, cannot be said to be unfounded. Any such adjudication by this Court would amount to adjudicating the Show Cause Notice dated 11.08.2021.

34. Next, it was contended by the learned counsel for the petitioner that in terms of Section 110 of the Customs Act, only improperly imported goods, which are liable for confiscation under Section 111 of the Customs Act, can be seized. He submitted that in terms of 2(25) of the Customs Act, imported goods do not include goods, which have been cleared for home consumption.

35. According to Mr. Singla, the Customs Act does not distinguish between the custom cleared goods or goods brought into India without custom assessment and clearance, and if the violation falls in the category defined under Section 111 of the Customs Act, the goods shall be liable for confiscation and seizure.

36. Mr. Singla relies upon the judgment passed by the Hon'ble Apex Court in the case of *Sheshank Sea Foods Pvt. Ltd., Karnataka v. Union of India and Others : (1996) 11 SCC 755* in support of his argument that breach of the condition of an Advanced Authorisation is also breach of the condition upon which the importer obtains exemption from payment of customs duty and therefore, in terms of Section 111(o), the Customs Authorities have power to investigate and confiscate such gold.



37. As discussed hereinbefore, we do not propose to adjudicate the said aspect since admittedly, the Show Cause Notice issued by the learned Commissioner of Customs (Imports) on 11.08.2021, is pending adjudication. The Adjudicating Authority, while adjudicating the Show Cause Notice, is not only to consider the factual aspects but also the legal issues raised by the parties.

38. Next, it was contended by Mr. Handoo that the extension of time for issuance of Show Cause Notice by order dated 16.02.2021 is not permissible. He submitted that no notice of hearing was given prior to any order of extension being passed under proviso to Section 110(2) of the Customs Act. He relied upon the judgment of the Hon'ble Apex Court in the case of ***Harbans Lal v. Collector: 1993 3 SCC 656***. The Hon'ble Supreme Court in the said case had held that whenever any action is taken by the executive authority to the prejudice to the rights of a person, he be required to give notice of personal hearing. The Hon'ble Supreme Court, in the said case, had observed that in terms of the erstwhile Section 110 of the Customs Act, the period of seizure cannot be extended beyond six months, unless the Collector served a notice and afforded a hearing to the owner of the goods before deciding the grant of extension.

39. The judgment passed by the Hon'ble Apex Court in the case of ***Harbans Lal v. Collector*** (*supra*) is not applicable to the facts of the present case. The proviso to Section 110(2) of the Customs Act was substituted by the Finance Act, 2018 with effect from 29.03.2018. It was



specifically incorporated that, the authorities are required to inform the person from whom the goods were seized, before the expiry of period in case any order for extension is passed. The proviso to Section 110(2) of the Customs Act stipulates in no uncertain terms that the period of six months can be extended for a further period, not exceeding six months, by the higher authority for the reasons to be recorded in writing with intimation to the person concerned.

40. The appropriate authority in the present case has specifically recorded that the investigation in the matter is not complete due to non-appearance of the witnesses, which necessitated the extension of time period for issuance of the Show Cause Notice by a further period of six months. It is specifically affirmed by the respondent that the said order was communicated to the petitioner. It is also not the case of the petitioner that the investigation is complete or has been delayed at the instance of the respondents. We, therefore, do not agree that in the facts of the present case, the decision to extend time for issuance of show cause notice warrants any interference in these proceedings.

41. The Division Bench of the Hon'ble Rajasthan High Court, in the case of ***Commissioner of Customs (Preventive) v. Swees Gems and Jewellery : 2019 SCC OnLine Raj 6178***, had the occasion to consider the amendment under Section 110(2) of the Customs Act. The Division Bench noted the judgment passed by the Hon'ble Apex Court in ***Harbans Lal v. Collector (supra)*** and held as under:



“15. The change in the statute, in the opinion of this court, is a significant one. The previous provision required the Commissioner to show sufficient cause, which meant that such cause had to be based on objective considerations. However, the amended provision merely requires the Commissioner to record the reasons in writing and “inform the person from whom such good were seized before the expiry of the period so specified”. In this court's considered view, the amended provision deliberately sought to overbear the previous view that a notice before extension was necessary. Now two conditions are to be satisfied : one, the Commissioner has to record his reasons in writing, why the extension is necessary, and two, inform the person from whom such good were seized before the expiry of the period so specified. The latter condition is equally important, in the opinion of this court, because it is a pre-requisite for the exercise of the power of extension. The pre-amended provision was silent on this aspect.

16. There are other reasons for this court to hold that the amendment brought about a radical change in the law. Parliament had knowledge-or is deemed to have knowledge of the existing state of law, which required notice, before extension. Therefore, the change of terminology is significant; the amendment has resulted in only two conditions, being insisted upon-primarily that the Commissioner should record his reasons, before the expiry of the period of limitation and should inform those reasons to the party concerned.

17. Besides, this court also notices that Parliament, aware of difficulties that might be faced by importers of goods, which might be seized, also provided, through an amendment in 2006, the facility of provisional release. Section 110A, enacted for this purpose, reads as follows:

“110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under Section 110, may, pending the order of the 3



[adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.”

18. *These developments, in the opinion of the court, resulted in a complete change of law, on the aspect. Section 110(2) too has not remained unaffected; a second proviso has been added, which states that:—*

“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”.

19. *The effect of these amendments, is that the rigor of unamended Sec. 110(2) has been softened. Now, a person, whose goods are detained, can claim provisional release. At the time when IJ Rao was decided, that facility was not available. Seen in the context of these facts, it is apparent that a textual reading of Section 110(2) would lead one to conclude that no separate notice is necessary, before extending the period of limitation by a further six months (for issuance of show cause notice); the authority has to record reasons in writing, which of course, should be based on materials and inform the concerned party about the extension before the expiry of the first period of six months. At this stage, it is necessary to also notice that even in IJ Rao, (supra) the court recognized that not all reasons can be disclosed, because investigative processes and information gathering can be confidential.”*

42. The same view was taken by the Division Bench of the Hon’ble Kerala High Court in ***M.M. Hassan and Another v. Superintendent of Customs and Others : 2020 SCC OnLine Ker 19557*** and the Hon’ble Calcutta High Court in ***Additional Director General, D.R.I, Kolkata Zonal Unit v. Dec Agrotech Pvt. Ltd.***



43. We respectfully concur with the view taken by the High Courts in the above cases and find no fault with the decision to extend time for issuance of a show cause notice under proviso to Section 110(2) of the Customs Act without affording the petitioner a prior hearing.

44. It was further argued that the Show Cause Notice dated 11.08.2021 is *non est* since the corrigendum was issued on 27.04.2022, where the Assistant Commissioner of Customs, who had issued the said Show Cause Notice, was substituted with the Principal Commissioner of Customs. It was submitted by Mr. Handoo that the substitution itself shows that the said Show Cause Notice was initially passed without any jurisdiction. The argument raised is meritless. By the corrigendum dated 27.04.2022, the respondents have substituted the Adjudicating Authority from Assistant Commissioner of Customs to Principal Commissioner of Customs. Mr. Handoo has not been able to point out any prejudice that is caused to the petitioner by substitution of the officer. It has also not been pleaded that the Assistant Commissioner of Customs was not the Proper Officer for issuance of the Show Cause Notice.

45. The next argument raised on behalf of the petitioner that DRI, Noida does not have the requisite territorial jurisdiction to pass the Seizure Order, is also unmerited.

46. Mr. Singla, learned counsel for the respondent, had drawn our attention to the Notification dated 01.02.1963, which provides all India jurisdiction to the Directorate of Revenue Intelligence, New Delhi.



Further, by a Notification dated 07.03.2002, the jurisdiction of officers of DRI has been extended to the whole of India. In regard to the contention that the DRI officers are not Proper Officers under Section 110 of the Customs Act, the said issue is admittedly pending consideration before the Hon'ble Supreme Court.

47. Mr. Singla had further relied upon the Finance Act, 2022, whereby certain amendments were made in the Customs Act with reference to appointment of the officers of customs and assignment of functions, whereby the officers of DRI have been declared to be Proper Officers with retrospective effect. The challenge to the Finance Act, 2022, is also pending consideration before the Hon'ble Supreme Court, and cannot be decided in the present petition.

48. It is an admitted fact that a Show Cause Notice has already been issued in the present case proposing to confiscate the 53 Kg Gold Bars. Thus, we do not consider it apposite to decide the contentious issues in proceedings under Article 226 of Constitution of India. The issues in the present case, apart from some being legal, are essentially factual. It is not the case of the petitioner that it does not have an efficacious remedy of filing a reply before the Adjudicating Authority. The petitioner has a full opportunity to agitate the factual as well as the legal issues involved in the present matter.

49. The adjudication of some of the issues raised would necessarily involve addressing disputed questions of fact and it would not be apposite to do so in these proceedings. Unless the High Court is fully



satisfied that the show cause notice is *ex facie* without jurisdiction, a writ petition should not be entertained. In the present case, admittedly the contentions advanced can be urged before the Adjudicating Authority. It is a settled law that the statutory fora are empowered to adjudicate not only the factual aspects, but also the issues in relation to their jurisdiction and other legal aspects.

50. In regard to the prayer seeking directions to the DGFT to revalidate / extend the licence of the petitioner as per provisions of the Foreign Trade (Development and Regulation) Act, 1992 (hereafter '**FTD Act**') and the Rules is concerned, this Court, while disposing of W.P.(C) No. 2571/2021 and W.P(C) No.2042/2021, had noted the stand taken by the DGFT that no application in respect to Advance Authorisation licence is pending with it. It was also noted that the DGFT had reaffirmed that if any application is received, the same would be decided as per policies and procedures uninfluenced by the request and recommendation made by the DRI.

51. The Gold, in relation to which the petitioner is seeking re-validation / extension of the period of export is lying seized with the respondents pending adjudication of the Show Cause Notice dated 11.08.2021. The petitioner would be at liberty to apply for any such extension/ revalidation of the Advance Authorisation licence after the adjudication of the Show Cause Notice dated 11.08.2021. As and when any such application is filed, the DGFT shall consider the same in accordance with law, keeping in mind the peculiar facts of the case, as



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the petitioner is contesting Respondent no. 2's power to seize the gold and has been effectively prevented from exporting the same. The DGFT shall also consider the petitioner's request for waiver or relaxation of the composition fee.

52. The petitioner is also at liberty to file an application for provisional release of gold under Section 110(A) of the Customs Act.

53. In view of the above, this Court does not consider it apposite to pass any direction for quashing of the Seizure Order dated 28.12.2020, whereby the gold was seized. The issue whether the gold which had been cleared by the Proper Officer, and imported under the Advance Authorisation Scheme, is liable for confiscation under Section 111 of the Customs Act; and whether the gold which at the time of detention was admittedly found at the declared premises could have been seized exercising powers under Section 110 of the Customs Act, in our opinion, should be dealt by the Adjudicating Authority at the first instance. The petitioner is also at liberty to raise all other grounds, as may be advised, before the Adjudicating Authority.

54. The writ petition, along with pending application(s), is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

DECEMBER 22, 2023 / "SK" / KDK/UG/SSH

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 10.01.2024
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