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

% **Date of decision: 04 September 2023**

\+ W.P. (C) 2595/2019

MOHAMMAD ZAID SALIM ..... Petitioner

Through: Mr. Rohit Kapur, Adv.

versus

THE COMMISSIONER OF CUSTOMS (AIRPORT& GENERAL) ..... Respondent

Through: Mr. Harpreet Singh, Standing counsel

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner is invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of mandamus for a direction to the respondent to release his gold chain in terms of Section 110(2) of the Customs Act, as amended upto date[1], which was seized/detained by the customs officers on 18 October 2017.

FACTUAL BACKGROUND

2. The facts of this case lie in a narrow compass. In a nutshell, the petitioner, who is an Indian passport holder arrived from Malaysia at Indira Gandhi International Airport, New Delhi[2] on 18 October 2017. He was intercepted by the Customs Officers while crossing through

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[1] The Act
[2] IGI Airport

the ‘Customs Green Channel’ and was diverted for examination. He states that his baggage contained nothing illegal except that he was wearing a gold chain around his neck weighing about 100 grams, which was seized/detained vide detention receipt No. 48986 dated 18 October 2017 on the assumption that the same was imported by him from Malaysia. It is stated that the gold chain was his personal ornament which he wore before leaving for Malaysia. Raising a grievance that his gold chain was unlawfully seized, he sent three communications to the Commissioner of Customs, IGI Airport vide letters dated 27 June 2018; 05 December 2018 and 12 February 2018 bringing to his attention that he had not been issued any Show Cause Notice under Section 124(a) of the Act, and thus, the gold chain was liable to be released to him in terms of Section 110(2) of the Act. As his requests were not responded to by the respondents, this Writ Petition came to be filed praying for the following reliefs:

> “(i) To issue a writ of mandamus order direction thereby directing the Respondent to unconditionally release the Gold chain of the Petitioner which was seized/ detained by the Customs officers on 18.10.2017 belonging to the petitioner.
> (ii) To pass such other or further order/s which this Hon'ble Court may deem fit and proper in the interest of justice.”

3. Notice was issued to the respondent and a short affidavit of Mr. Ashok Kumar Dahiya, Assistant Commissioner (Legal) dated 29 August 2019 has been filed wherein *inter alia* it is deposed that the petitioner was issued a notice dated 19 February 2018 to obtain release of the detained goods from the office of the answering respondent on payment of necessary duty but the same was not replied

to; and consequently the gold chain was inventorized and after it was appraised by the Jewellery Appraiser and the gold item was deposited with the Government Mint at Mumbai on 26 June 2018 for conversion into standard gold and for further sale to the State Bank of India, Mumbai as per the standard procedure. Incidentally, the said aspect was brought to the notice of this Court on 27 May, 2019 and on directions the record was produced on 24 July 2019.

4. It is further asserted in the affidavit that no declaration was made by the petitioner before leaving from India that he was carrying any gold item on his person, and therefore, there was no question of issuance of a Show Cause Notice as it was not a case of seizure under Section 110 of the Act. It was lastly stated that the gold chain was rather concealed in the baggage of the petitioner. It is pointed out that the mechanism for temporary detention of baggage is provided by Section 80 of the Act and as per the Baggage Rules framed under Section 81 of the Act. Clause 13.1 falling in Chapter 26 of the Custom Manual, 2013 provides as under:-

> **"13. Detained Baggage:**
> 13.1. There may be occasions when the passenger is not in a position to clear his baggage for any reason e.g. inability to pay the Customs duty demanded. In such a situation, the passenger may request the Customs to detain his baggage either for re-export at the time of his departure from India or for clearance subsequently on payment of duty. The detained baggage would be examined and its full details inventorised before being taken in the custody of Customs."

ANALYSIS AND REASONS FOR DECISION

5. Having heard the learned counsels for the parties and on perusal of the record, we have no hesitation in holding that the respondent has

dealt with the entire matter patently in an arbitrary, unjust and illegal manner. Although, this Court in W.P. (C) 8902/2021 titled **Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India & Ors.** has already laid down the proposition of law that gold is a 'restricted item' and if the importation of gold is in the nature of smuggling within the meaning of Section 2(39) of the Act, the adjudicating authority can exercise the discretion under Section 125 of the Act to absolutely confiscate the gold items and levy not only duty but also impose fine/penalty apart from declining to redeem/release the goods. However, decision in the aforesaid case decided by this Court does not come in the way of the petitioner for grant of appropriate relief in law since, firstly, it is evident that the respondent has not followed the procedure prescribed in the Act.

6. In arriving at that conclusion, we may refer to Section 110 and Section 124 of the Act, which provide as under:

> **"110. Seizure of goods, documents and things.—**
> (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. 1[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(2) 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 months may, on sufficient cause being shown, be extended by the [Commissioner of Customs] for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of customs.

124. **Issue of show cause notice before confiscation of goods, etc.**—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

> Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral.

7. A conjoint reading of the above referred provisions bring out that Section 110(2) categorically provides that where any goods have been seized under Sub-Section (1) and no notice thereof is given under Clause (a) of Section 124 within six months of the seizure, the goods are liable to be returned to the person from whose possession they were seized. Further, in terms of Section 110(2) read with its Proviso, the maximum period for which the goods can remain seized without issuance of a notice under Section 124(a) is one year. There is no dispute that the seizure for the initial period of six months has not been extended by the Principal Commissioner or Commissioner of Customs by a further period not exceeding six months. In the instant matter, the gold chain was detained on 18 October 2017 and till the date of filing of the petition or thereafter, no notice under Section 124(a) of the Act has admittedly been issued.

8. The plea of learned counsel for the respondent that the gold item was detained at the request of the petitioner himself as is evident from the detention slip is also not palatable. Anyways, there is no provision for 'detention' of goods instead of their 'seizure'. No opinion was formed by the Customs Officer as to whether the gold chain is liable to be confiscated. No show cause notice was issued to the petitioner either.

9. Before parting with this petition, it is pertinent to note that the matters in issue in the present matter are squarely covered by decision

in the case of **Chaganlal Gainmull v. Collector of Central Excise**[3], where it was held that if the show cause notice was not issued within six months from the date of seizure, the consequence would be that the person from whom the gold was seized would become entitled to its return. Although the aspect of extension of period of detention for another six months vide the Proviso to Section 110(2) of the Act was introduced w.e.f 29.03.2018[4] the ratio still holds sway to the effect that issuing of notice to the owner for detention of seized goods is mandatory and the Apex Court frowned upon the fact that no explanation was offered by the Respondents as to why they were constrained to dispose of the seized gold, when it was neither perishable nor hazardous, and there was no answer as to why the gold was disposed of without any notice being issued to the person from whom it was seized.

10. Avoiding a long academic discussion, reference can also be invited to a decision of our own High Court in the case of **Jatinder Kumar Sachdeva v. Union of India**[5], wherein a gold *kara (bracelet)* seized from the petitioner on arrival in India and detained for more than a year without any notice was held to be unsustainable in law and the gold item was ordered to be released to the petitioner.

11. It is relevant to indicate that the procedure for sale of goods and application of sale proceeds is governed by section 150(1) of the Act, which provides that where any goods not being confiscated goods are to be sold or disposed of under any provision of the Act in terms of

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[3] 1999 (109) E.L.T. 21 (SC)
[4] Finance Act, 2018(Act No. 13 of 2018)
[5] MANU/DE/3613/2016

section 110(1A), a notice must be issued to the owner. At the cost of repetition, the gold chain had since been deposited in the Government Mint, Mumbai on 26 June 2018 without any notice to the petitioner, which fact was brought on the record during the hearing on 27 May 2019.

12. Thus, in the end addressing the issue as to what relief should be granted to the petitioner, we notice that detailed guidelines are in place in terms of a notification[6] for the procedure to be followed for the sale of seized/confiscated gold that *inter alia* provides for engagement of SPMCIL[7] in consultation with the RBI except that Clause 3.1[8] thereof provides for disposal of seized/confiscated gold (other than gold ornaments/jewellery/articles). Evidently, the aforesaid circular does not provide any guidelines for handling of gold ornaments/jewellery/ articles. However, there is a subsequent notification[9] whereby vide clause 3.1.2[10] guidelines are provided for evaluating the amount to be

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[6] F.No. CBIC-50711/5/2021-INV-Customs dated 03.12.2021

[7] Security Printing and Minting Corporation of India Ltd

[8] Henceforth, the seized/confiscated gold (other than gold ornaments/jewellery/articles) shall be sold to RBI only. Any mention of gold in subsequent paragraphs shall refer to gold other than gold ornaments/jewellery/articles. For this purpose, SPMCIL has been engaged for collection, transportation, conversion into standard gold bars and delivery to RBI. The SPMCIL has facility to melt gold at India Government Mints (IG Mint) located at Hyderabad, Kolkata and Mumbai. Therefore, Hyderabad, West Bengal (P) and Mumbai (General) Customs Commissionerates have been designated as Focal Customs Commissionerates. Customs Commissionerates have been mapped to one of the three mints on the basis of their location (**Annexure-II).** IG Mints will be carrying out processes such as pre-melting, assaying and weighing in the presence of Customs Officer. For this purpose, the focal Customs Commisionerates shall nominate an officer not below the rank of Superintendent of Customs.

[9] F.No. CBIC-50711/5/2021-INV-Customs dated 06.09.2022

[10] Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of, the amount to be refunded in lieu of such gold shall be calculated as given below:

i. If the seizure is made in the Customs area, calculation shall be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL; and refunded in lieu of gold which has been disposed of. In our opinion, although there are no specific guidelines with regard to evaluation of gold ornaments/jewellery/articles as involved in the instant case, the latter notification lays down a fair and logical premise that valuation of the gold article would be assessed based on the tariff value of gold on the date of transfer of the gold items to the RBI.

RELIEF

13. In view of the foregoing discussion, we allow the Writ Petition thereby directing the respondent to do the necessary assessment/ evaluation as to the value of gold item as on 26 June 2018 based on the tariff value of gold applicable on that day, as per prescribed RBI parameters including the notification referred to hereinabove, and pay a sum equivalent thereto to the petitioner. We direct that the requisite exercise be conducted within a period of three weeks from today failing which the respondent shall also be liable to pay token costs of Rs. 25,000/-.

14. The Writ Petition is disposed of accordingly.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

September 04, 2023

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ii. If the seizure is made at any place other than the Customs area, calculation shall be based on the average market price of gold on the date of transfer of such seized/ confiscated gold to SPMCIL.