IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO/372/2024

SUJATA SALES AND SERVICE PRIVATE LIMITED

VERSUS

THE COMMISSIONER OF CUSTOMS

(PREVENTIVE), WEST BENGAL & ORS.

For the petitioner	:	Mr. Mainak Bose, Adv. Mr. Shantanu Mitra, Adv. Mr. Sreyash Basu Dasgupta, Adv. Mr. Kishwar Rahman, Adv. Mr. Prabhleen Bharara, Adv. Mr. Aniket Nanda, Adv.
For the respondents	:	Mr. Kaushik Dey, Adv. Mr. Abhradip Maity, Adv.
Heard on	:	16.05.2024.
Judgment on	:	**16th May, 2024**.

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, *inter alia,* challenging the seizure effected by the Customs Authorities vide two inventory cum seizure lists in respect of goods seized under Section 110 of the Customs Act, 1962 (hereinafter referred to as the "said Act"), both dated 2nd February, 2024.

2. The petitioner raises a jurisdictional issue, it contends that the seizure had been effected by two separate seizure memos, one by the

Superintendent of Customs (Preventive) and the other by the Inspector of Customs (Preventive), DPU, Barasat Customs Division, Kolkata-700 001 at Customs House, Strand Road on 2nd February, 2024. According to the petitioner, the concerned Officers who have seized the goods being "gold bullions" did not have the jurisdiction to seize the same as the Customs House at Strand Road does not fall within the jurisdictional area of the Commissioner of Customs (Preventive) West Bengal, under whom the Officers are working.

3. Mr. Bose, learned Advocate representing the petitioner by drawing attention of this Court to page 14 of the writ petition submits that the petitioner had purchased gold bullions (hereinafter referred to as the "said goods") from one Bansal Ornaments and such purchase is supported by a tax invoice dated 23rd January, 2024. The petitioner is the owner in respect of the aforesaid goods. By drawing attention of this Court to the two inventory cum seizure of the goods memos seized under Section 110 of the said Act, it is submitted that the Superintendent of Customs (Preventive) and the Inspector of Customs (Preventive) did not have jurisdiction to seize the said goods inasmuch as the seizure was effected outside the jurisdictional area of the said Customs Officers. By placing reliance on the notification dated 24th August, 2017, it is submitted that the Government of India, Ministry of Finance (Department of Revenue) Central Board of Excise and Customs in exercise of power conferred under Section 4(1) of the said Act, and in suppression of the notification of the Government of India, Ministry of Finance (Department of Revenue)

dated 16th September, 2014 and the other relevant notification as appearing therein had appointed Officers mentioned in Column (3) of Table 2 of the said Notification to be the Principal Commissioners of Customs or the Commissioners of Customs and the Officers mentioned in Column (4) of Table 2 thereof, to be Additional Commissioners or Joint Commissioners or Deputy Commissioners or Assistant Commissioners of Customs, for the areas mentioned in the corresponding entry in Column (2) of Table 2. It is submitted that under Table 2 serial No.10, under the corresponding Columns (3) and (4) the Officers exercising jurisdiction over the areas specified under the corresponding Column (2) have been identified. They are (i) Principal Commissioner of Customs (Port), Kolkata, (ii) Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata and, under column no. (4) – Additional Commissioners, or Joint Commissioners, or Deputy Commissioners, or Assistant Commissioners of Customs working under the control of – (i) Principal Commissioner of Customs (Port), Kolkata, (ii)Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata. The corresponding areas of jurisdiction of the aforesaid officers are (i) Ports of Kolkata and Haldia, Netaji Subhash Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations, so much of the Hooghly river as is downstream of the northern limit of Kolkata Port, and all lands as are within 10 kilometers of high water mark at spring tide on either side of the river; (ii) The Andaman and Nicobar Islands; (iii) FALTA Special Economic Zone.

4. Having regard to the aforesaid, it is submitted that the Customs Officers (Preventive) did not have the jurisdiction to initiate any proceeding including proceeding under Section 110(1) of the said Act, since, the Customs Officers mentioned in Column (3) of the Table 2 under serial no.10 of the aforesaid notification by reasons of specified jurisdictional area delineated for such officers, it is such officers who have the exclusive jurisdiction to deal with the matter falling within their jurisdictional area. Since, the place where seizure had been effected falls within the aforesaid officers' exclusive jurisdictional area, the proceeding initiated by the Customs Officers (Preventive), *inter alia*, including passing off orders of detention and issuance of inventory/seizure list is without jurisdiction, the same is nonest and cannot be acted upon. In support of his aforesaid contention, he has placed reliance on the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Commissioner of Customs v. Md. Ahmed Ali Khan,*** reported in **2006 SCC OnLine Cal 858** as also on an unreported judgment delivered by this Court in the case of ***Bangari Bhola v. Union of India & Ors.***, in WPO 334 of 2024, on 7th May, 2024. In any event it is submitted that the petitioner had also made a representation for release of the aforesaid goods. Despite such application being made, no steps have been taken by the respondents to release the said goods. The above would show that the conduct of the respondents do not appear to be bona fide.

5. Mr. Dey, learned Advocate representing the Customs authorities has placed copies of two several panchnamas before this Court both dated 2nd February, 2024 and submits that Safiqul Molla was intercepted by the Officers of the Customs (Preventive) on a bike bearing registration no. WB26 AE 4258 while he was passing through Haroa Bridge at about 11:30 a.m. On being so intercepted, although, initially the said Safiqul Molla who was riding the bike had denied of carrying any smuggled gold, however, he later tendered five pieces of yellow metal believed to be gold of foreign origin, to the Customs Officers. Immediately the Officers had made him sit in the office vehicle along with the detected gold and the person concerned was brought along with the bike to the Head office in the Government vehicle. Later the aforesaid person was further interrogated and subsequently the inventory of the goods seized under Section 110 of the said Act was prepared at the Custom House office at Strand Road, Kolkata. Abu Khair Gazi was also intercepted near a paan shop at Haroa Bazar. After initial denial, the said Abu Khair Gazi had made over ten pieces of yellow metal believed to be gold of foreign origin and on recovery thereof at Haroa Bazar, was brought to the Customs Office at Kolkata where the inventory cum seizure list was prepared. Both the copies aforesaid panchnamas are taken on record.
6. Mr. Dey submits that the goods in question had been intercepted and taken custody of at Haroa Bridge and Haroa Bazar respectively within the State of West Bengal, outside the jurisdictional area of the

Principal Commissioner of Customs (Port), Kolkata and the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata. By referring to the provisions of Section 110 of the said Act, it is submitted that the Officers concerned at Haroa Bridge and Haroa Bazar, at the time of interception and recovery had reasons to believe that the said goods are liable for confiscation under the said Act and for reasons as aforesaid, had brought the abovenamed persons at the Customs Office to complete the formalities of seizure. Simply because the formalities as regards the seizure were completed at Strand Road, the same does not ouster the jurisdiction of the Superintendent or the Inspector of Customs (Preventive) from preparing the seizure list. There is no lack of jurisdiction on the part of the Superintendent of Customs (Preventive) and the Inspector of Customs (Preventive) to take action since, the area of jurisdiction of the Commissioner of Customs (Preventive) under whom they work is the whole of the State of West Bengal and Sikkim and the union territory of Andaman and Nicober Islands.

7. Mr. Dey further submits that the petitioner till date has not made any application for provisional release. The petitioner has also failed to establish by demonstrating any credible document that the petitioner is the owner of the goods in question. The purported tax invoice relied on by the petitioner is a suspect document. He submits that although, the tax invoice indicates that the gold is worth Rs.1,50,17,965.30, yet only two fund transfers in support of the aforesaid transaction, totaling to Rs.40 Lac have been disclosed,

which are at pages 59 and 60 of the writ petition. Both those transactions had taken place subsequent to the seizure of the goods in question. In the facts noted hereinabove, it is submitted that the petitioner has only taken a chance by filing the instant writ petition. No relief should be afforded in favour of the petitioner.

8. Heard the learned Advocates appearing for the respective parties and considered the materials on record. Admittedly, it is noticed that the seizure notices have been issued by the Superintendent of Customs (Preventive) and by the Inspector of Customs (Preventive) on 2nd February, 2024 at the Customs House at Strand Road, Kolkata. However, a perusal of the Panchnama along with the seizure memos would demonstrate that the two persons, namely, Safiqul Molla and Abu Khair Gazi had been intercepted at Haroa Bridge and at Haroa Bazar respectively, at North 24 Parganas, within the State of West Bengal. The custody of the goods in question was taken at Haroa Bridge and at Haroa Bazar within the State of West Bengal though, the formalities in connection with seizure thereof appears to have been concluded at the Customs House, Kolkata. Although, Mr. Bose, by placing reliance on an unreported judgment delivered in the case of ***Bangari Bhola*** (supra) and the Judgment delivered in the case of ***Md. Ahmed Ali Khan*** (supra) submits that since, the seizure notices had been issued by the Customs Officer (Preventive) within the area of jurisdiction of the Principal Commissioner of Customs (Port), Kolkata, the proceedings are without jurisdiction, I find that the case of ***Bangari Bhola*** (supra) is distinguishable on facts. In the said case

the goods in question were intercepted and a detention order was issued within the domestic terminal of the Airport by the preventive officer of the Customs Authority, unlike the present case. The judgment delivered in the case of ***Md. Ahmed Ali Khan*** (supra) is also distinguishable on facts as the goods in question in the said case landed at Calcutta Dock and was later shifted to CFS Balmer Lawrie, when the goods were examined and seized. This judgment also does not assist the petitioner. It may, however, be noted that the proper Officers in the instant case, being the Officers under the Commissioner of Customs (Preventive), West Bengal, had reasons to believe that smuggled gold was being transported and accordingly had set up a plan to intercept the smuggled gold at Haroa Bridge and at Haroa Bazar. Accordingly, Safiqul Molla and Abu Khayer Gazi were intercepted at Haroa Bridge and at Haroa Bazar respectively, 24 Parganas (North), within the area of jurisdiction of the Officers under the Commissioner of Customs (Preventive), West Bengal. The goods were also taken custody of at the said location and only the formalities in connection with the seizure were completed at the Head office of the respondents. The matter has travelled further. Memorandum of arrest had also been issued and on the basis thereof criminal proceedings had been initiated and the detenues have since been granted bail. Though, in this case the petitioner did make any application for release of the goods, there is no application for provisional release in terms of Section 110A of the said Act. The purported tax invoice and supporting documents disclosed herein creates more than an element of suspicion as regards ownership of the petitioner in respect of the goods in question. I am afraid that the petitioner has not been able to establish its right of ownership over the goods and the same appears to be a disputed, however, without going into such an issue at this stage, I am of the view that the order of seizure passed by the Inspector of Customs (Preventive) and the Superintendent of Customs (Preventive) do not suffer from any jurisdictional error. No case for interference has been made out.

9. Since, the only challenge as argued, is limited to the authority of the Customs Officers (Preventive) to issue the seizure cum inventory list and to take action on the basis thereof, the writ petition fails for reasons discussed hereinabove. The same is accordingly dismissed.

10. There shall, however, be no order as to costs.

11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

S. De/SN.