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

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Date of decision: 08.02.2024

+ **W.P.(C) 12295/2023**

SUNIL PATIL

..... Petitioner

versus

THE UNION OF INDIA & ORS.

..... Respondents

+ **W.P.(C) 14464/2023**

NARENDRA PATIL

.....Petitioner

versus

THE UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Ayush Jain, Mr. Chetan Agarwal, Ms. Sonali Gambhir & Mr. Kushgra Singh, Advocates.

For the Respondent:

Mr. Raghvendra Shukla, Sr. Panel Counsel for R-1/UOI.

Mr. Pramod Bahuguna, Advocate for respondent.

Mr. Atul Tripathi, SSC with Mr. V. K. Attri, Advocate for R-2 to 4.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT



SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners in the respective petitions seek quashing of the detention receipts both dated 20.12.2022 and further seek release of the respective Gold Chains weighing 116 grams in W.P.(C) 12295/2023 and 122 grams in W.P.(C) 14464/2023.
2. Petitioners were returning from Dubai to India on 20.12.2022. Petitioners were intercepted at the Indira Gandhi International Airport and searched by the custom officers for detainable goods in their possession. The officers found a Gold Chain each in the possession of both the petitioners. A detention receipt dated 20.12.2022 was issued to the petitioners in respect of the respective Gold chains. Since then the chains are in the custody of the respondents. Petitioners seek quashing of the detention receipt and release of the Gold Chains.
3. Learned counsel appearing for the respondents/Custom Authorities submits that Gold Chains were brought in the country in contravention of law and petitioners were attempting to cross the green channel without declaring the gold chains and the same were detected only on a search being carried out by the concerned officers.
4. Learned counsel further, submitted that as of now the gold chains have been detained and there is no show cause notice for seizure of the said gold chain. They submit that the appraisal of the



gold chain with regard to their weight and purity has still to take place and the same can only take place in the presence of the petitioners and thereafter a decision would be taken by the custom authorities with regard to the future course of action for the said illegal import of gold.

5. By the subject petitions, the petitioners seek release of the gold chains that have been seized from the petitioners under the garb of a detention receipt.

6. Reference may be had to the judgment of a co-ordinate bench of this Court in *Mohd. Salman Khan vs UOI (2016) 337 ELT 513*, wherein a co-ordinate bench has held that there is no provision in the Customs Act 1962 hereinafter referred to as the [“Act”] which permits detention of goods in lieu of seizure. Said bench has noticed that since no show cause notice was issued under section 124 (a) of the Act within six months of the detention/ seizure, the goods were liable to be returned to the person from whose possession they have been seized in terms of section 110 (2) of the Act.

7. Reference may be had to section 124 of the Act which reads as under:-

“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 an Assistant 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.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.”

8. Section 124 stipulates that no order confiscating any goods or imposing any penalty shall be made unless the owner of the goods is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty.

9. Section 110 of the Act reads as under:-

“Section 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:

XXXX

XXXX

XXXX

(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 Principal Commissioner of Customs or Commissioner of Customs may, for 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 were seized before the expiry of the period so specified:

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.”

10. Section 110 (1) of the Act provides that where the proper officer has reason to believe that any goods are liable to confiscation, he may seize such goods. Section 110 (2) mandates that 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, the goods shall be returned to the person from whose possession they were seized. Proviso to Section 110 (2) grants power to the Principal Commissioner of Customs or Commissioner of Customs for reasons to be recorded in writing to extend the said period by a further period of six months.

12. The co-ordinate bench of this Court in *Mohd Salman Khan (Supra)* has held that as under:-

“6. In response to a specific query from the Court, learned counsel for the Respondent was unable to point out any provision in the Act that permitted ‘detention’ of goods in lieu of ‘seizure’. She was also unable to say if there was any protocol or manual devised by the Department of Customs for timely disposal of



applications for release of seized goods. She repeatedly stated that the detention of the currency in the present case was at the Petitioner's own request and that it was the Petitioner who failed to come forward to produce the documents necessary to satisfy the Customs Department that he was entitled to the release of the seized currency in his favour.

7. At the outset, it requires to be observed that the legislative intent has made clear in Section 110(2) of the Act which reads as under:

“S. 110(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.”

8. Whatever may be the justification that the Customs Department wishes to put forth for seizing the goods, there is a definite time-limit within which the Department has to determine if the seized goods are to be confiscated and if so, for giving a SCN under Section 124(a) of the Act. There appears to be no provision for ‘detention’ of goods instead of their ‘seizure’. Therefore, where a customs officer is satisfied that the person found with the goods is not able to produce the necessary documents to justify being in possession thereof, the Customs officer has to form an opinion under Section 110(1) of the Act as to whether the said goods are liable to be confiscated and if so, to give a SCN under Section 124(a) of the Act. Section 110(2) makes it clear that the maximum time-limit for giving a SCN is six months from the date of seizure and this period is extendable by another six months provided sufficient cause is made out to the satisfaction of the Principal Commissioner or Commissioner (Customs). The procedure for dealing with confiscation of goods and for their release has been provided in the Act itself. Section 110A also talks of provisional release of the goods that have been seized.

9. The upshot of the above discussion is that the Customs Department cannot take shelter under the device of ‘detention’ of goods in order to avoid the consequences flowing from the ‘seizure’ of goods. In other words, if the Customs Department is unable to give a SCN under Section 124(a) of the Act within six



months (plus another six months where a specific order to that effect has been passed) then in terms of Section 110(2) of the Act, the said goods have to be released to the person from whom they were seized.

10. In the present case, there appears to be no legal justification for the Customs Department not 'seizing' the Nepalese currency recovered from the Petitioner in the first place and secondly, in not giving a SCN within six months of such seizure. In the absence of any provision in the Act that permits 'detention' of such goods, the Court has to proceed on the basis that what was effected on 17th June, 2014 was a 'seizure' of Nepalese currency from the Petitioner. That the seized currency was in the possession of the Petitioner and seized from him is also not in dispute.

11. If that is the position, then under Section 110(2) of the Act a SCN had to be given under Section 124(a) of the Act within six months of 17th June, 2014. With no such SCN having been given, the inevitable consequence, therefore, is that as mandated by Section 110(2) of the Act, the seized goods "shall be returned to the person from whose possession it was seized". Consequently, the Respondents are directed to release the Nepalese currency for which a 'detention' receipt was issued on 17th June, 2014, to the Petitioner upon him presenting himself with a certified copy of this order before the Superintendent of the warehouse (where the currency is presently kept by the Respondents) not later than two weeks from today. The writ petition is disposed of with the above terms." (underlying supplied)

13. As held in *Mohd. Salman Khan (Supra)* there is no provision under the Act which permits detention of goods instead of seizure. The Custom Department cannot take shelter under the device of detention in order to avoid the consequences of seizure. In terms of Section 110 (2) of the Act if the Show Cause Notice under Section 124 of the Act is not issued within the statutory period the goods have to be released. By resorting to detention instead of seizure the custom authorities



cannot circumvent the mandate of Section 110 (2) of the Act.

14. In the instant case, the Gold Chains were taken possession by the Custom Authorities by issuing a detention receipt which infact amounted to seizure of the said Gold Chains. There is no dispute that the Gold Chains are lying in the custody of the Customs Authorities since their seizure dated 20.12.2022, i.e., over a period of one year.

15. As per the respondents/Custom Authorities, there is no move to seize the goods as of now and as such admittedly no notice under Section 124 (1) of the Act has been issued, since the detention of the goods on 20.12.2022.

16. Since the Customs Department have not issued any Show Cause Notice as mandated under Section 110 (2), the goods i.e., Gold Chains are liable to be returned to the persons from whom the possession they were seized.

17. Reference may be had to the judgment of the Hon'ble Supreme Court in *Chaganlal Gainmull vs Collector of Central Excise & Ors 1990 (Supp) SCC 527*, wherein the Hon'ble Supreme Court has held as under:-

“3. It appears to us that the consequence that flows from the failure to issue a show cause notice under Section 124(a) within the period of six months is limited to what is envisaged in sub-section (2) namely that the goods shall be returned to the person from whose possession they were seized. Section 110(2), does not prescribe a period of limitation within which a show cause notice is to be issued.



But if no action by way of issue of a show cause notice is initiated under Section 124(a) within the period of six months, stipulated by Section 110(2) the effect would be that the person from whom the goods were seized would become entitled to their a return.”

18. In terms of *Chaganlal Gainmull (Supra)*, the consequence of failure to issue a show cause notice under Section 124 (a) within the statutory period is that the stipulations of section 110 (2) would come into effect and the person from whom the goods were seized would become entitled to their return.

19. In view of the above, both the petitions are allowed. The respondents/Customs Authorities are directed to forthwith release the gold chains seized from the petitioners in terms of section 110 (2) of the Act.

20. Since the contention of the respondents is that the articles have not yet been appraised/valued in terms of the weight and purity, it is directed that at the time of release, petitioners or their duly authorized representatives shall be personally present before the Proper Officer so that Gold Chains would be appraised/valued in terms of their purity and weight.

21. It may also be noted that at the time of detention of the chains on 20.12.2022 petitioners had agreed not to dispute the payment of custom duty. Accordingly, the Proper Officer shall inform the petitioners the custom duty, if any, payable on the alleged wrongful import of the goods. On deposit of the same with the Customs



Authorities, said gold chains shall be released to the petitioners forthwith.

22. It is further clarified that release of the articles would not prevent the Customs Authorities from such action as may be permissible in law in respect of the alleged wrongful import of the said chains.

23. Petitions are disposed of in the aforesaid terms. All the rights and contentions of the parties are reserved.

24. *Dasti* under the signature of Court Master.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 08, 2024/sk