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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 04.11.2024

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W.P.(C) 10772/2024

MS SHUBHANGI GUPTA

.....Petitioner

Through:

Mr. Amit Chadha, Mr. Sambhav Jain,
Mr. Atin Chadha, Mrs. Munisha
Chadha, Mr. Harjas Singh Chhatwal
and Mr. Saarthak Sethi, Advs.

Versus

COMMISSIONER OF CUSTOMS & ORS.

.....Respondents

Through:

Mr. Shubham Tyagi, SSC.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“A. Direct the Respondents to unconditionally release the seized gold ornaments of the Petitioner forthwith detained vide Detention receipt bearing No-61290 dated 02.01.2024.

B. To issue a writ in the nature of mandamus or any other order or direction thereby, quashing and setting aside the impugned detention receipt dated 02.01.2024, as the same is harsh, unfair, illegal, absurd and therefore non-est beyond the expiry of six months i.e. beyond 02.07.2024 without the issuance of show cause notice under Section 124 of the Customs Act, 1962 and all consequential relief to the Petitioner.”

2. The petitioner claims that she is a citizen of the Republic of Vanuatu.



However, the detention receipt dated 02.01.2024 notes her nationality as 'Singapore'. The petitioner holds an Overseas Citizen of India (OCI) card. She states that she had arrived at Indira Gandhi International (IGI) Airport, Delhi on 02.01.2024 along with her husband and her child. On arrival, she was intercepted by the Customs Officers. At the material time, she was wearing a watch of a well-known luxury brand, 'Patek Philippe'. Although the watch is a personal effect, the same was detained by the Customs Authorities and a detention receipt dated 02.01.2024 was issued by the Customs officials.

3. The petitioner states she does not know about the whereabouts of the detained item and no show cause notice has since been issued to her for any further action under the Customs Act, 1962 (hereafter *the Act*). The petitioner has also not received any communication from the Customs Authorities informing her of further proposed action in respect of the detained item.

4. The petitioner claims that her representative had made personal visits to the Customs Department during the months from January, 2024 to March, 2024. However, she had not received any response from the Customs Authorities. Thereafter, on 29.04.2024, the authorized representative of the petitioner sent an e-mail to the Department seeking release of the detained item (Patek Philippe watch). The petitioner did not receive any response to the said e-mail.

5. It is in the aforesaid background that the petitioner has filed the present petition.

6. The Revenue has filed a counter affidavit confirming that the petitioner was intercepted at the IGI Airport, Delhi when she was walking



through the green channel. The petitioner and her baggage were searched and a Patek Philippe watch was recovered from her. It is stated that the petitioner's voluntary statement was recorded on the very same day – 02.01.2024 – under Section 108 of the Act, and it is claimed that she had stated that she did not need any show cause notice or a personal hearing in the matter. The Revenue accepts that the petitioner's authorized representative had visited the Customs Officials. The Revenue state that the petitioner was called upon to submit proof of the mode of payment made for the watch detained and the invoice/bills evidencing the purchase thereof, but the authorized representative had not complied with the said request.

7. It is apparent from the counter affidavit filed by the Revenue that the material facts to address the relief sought by the petitioner are not disputed. It is not disputed that the watch in question had been detained by the Custom Authorities on 02.01.2024. It is also not disputed that a show cause notice under Section 124(a) of the Act was not issued to the petitioner. Although it is claimed that the petitioner was called upon to furnish the evidence of purchase of the detained item and the remittance made, it is admitted that no such written communication was served on the petitioner.

8. Section 110(1) of the Act empowers the Customs Officers to seize such goods which, the proper officer has reason to belief, are liable for confiscation. There is no provision for detaining the goods for an indefinite period. In the present case, it is not contested that the goods in question were in fact seized. However, no seizure memo has been prepared and the Customs Authorities have declined to release the item in question on the basis of the detention receipt.

9. The learned counsel appearing for the Revenue referred to the proviso



to Section 124(a) of the Act which contains provisions regarding the issuance of notice before confiscation of goods. The said Section is reproduced below:

“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.”

10. He submitted that it is not necessary that a show cause notice under Section 124 of the Act be issued in writing and the said notice can also be issued orally. He further contended that in the present case, an oral show cause notice under Section 124 of the Act was issued. Since the petitioner had waived the right to make any representation under Section 124(b) of the Act, the requirements of Section 124 of the Act were complied with and the Customs Authorities are now required to pass an order.

11. The aforesaid contention is unmerited. There is no averment in the counter affidavit to the effect that an oral show cause notice was issued to the petitioner calling upon her to show cause why the item in question be not



confiscated. Absent any such notice (whether in writing or in oral), we are unable to accept that the provisions of Section 124(a) of the Act are satisfied. It is also material to note that it is not the stand of the Customs Authorities in their counter affidavit that any such oral notice was issued. On the contrary, it is claimed that no such notice is required to be issued as the petitioner had waived the same. Concededly, there is no provision for waiver of the notice as prescribed under the statute.

12. In terms of Section 110(2) of the Act, the seized goods are required to be returned, if a notice under Section 124 of the Act is not issued within the period as prescribed. As noted above, in the present case, it is apparent that no such notice was issued by the Customs Authorities.

13. The learned counsel appearing for the petitioner had also referred to the decision of this Court in *Mohammad Zaid Salim v. The Commissioner of Customs (Airport & General):2023:DHC:6568-DB* wherein this Court had referred to the provisions of Sections 110 and 124 of the Act and had observed as under:

“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.”



14. We are of the view that in the facts of the present case, the item seized by the Revenue is required to be returned forthwith as the provisions of Section 124 of the Act have not been complied with.

15. In view of the above, the present petition is allowed and the Revenue is directed to forthwith release the item in question to the petitioner.

16. Before concluding, it is also necessary to note that it is the petitioner's case that she desires to re-export the item in question and to carry the same back. In this regard, the petitioner shall apply for re-export of the item, which shall be considered in accordance with law.

17. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 4, 2024/A

Click here to check corrigendum, if any