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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 20th March, 2025

+ **W.P.(C) 11518/2024**
RAKESH KUMAR GUPTAPetitioner
Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Maninder Kaur & Mr. Ayush Mittal, Advocates.
versus

DIRECTORATE OF REVENUE INTELLIGENCERespondent
Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Vikas Kumar & Mr. Subham Kumar, Advocates.

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+ **W.P.(C) 11607/2024**
VIBHUTI BHUSHAN DASPetitioner
Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Maninder Kaur & Mr. Ayush Mittal, Advocates.
versus

DIRECTORATE OF REVENUE INTELLIGENCERespondent
Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Vikas Kumar & Mr. Subham Kumar, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petitions have been filed by the Petitioners - Rakesh Kumar Gupta and Vibhuti Bhushan Das under Article 226 and 227 of the Constitution of India seeking issuance of an appropriate writ directing the Respondent to



release the electronic devices of the Petitioners.

3. The Respondent-Directorate of Revenue Intelligence (hereinafter '*DRI*') received intelligence in respect of smuggling of substantial quantity of foreign origin gold in a completely concealed manner through triangular valves.

4. Upon intelligence being received, in May 2022, the DRI took action and seized the goods. The freight forwarding was handled by M/s ECG Easy Connect Logistics Pvt. Ltd of which the Petitioners are the Directors.

5. The statement of Mr. Rakesh Kumar Gupta was recorded under Section 108 of the Customs Act, 1962. Various devices are stated to have been seized from the Petitioner, details of which are as under:

- i) One Mobile Phone-Realme EMX1921, IMEI No.86267204774114 and IMEI862672047741106 [Mobile No. 9871880949]
- ii) One Mobile Phone-Samsung Galaxy A50S, IMEI No. 351595119911042/01 and 351596119911040/01 [Mobile No. 9999571058]

6. Further, while in the course of recording of the statement of Mr. Vibhuti Bhushan Das under Section 108 of the Customs Act, 1962, one mobile phone of the said Petitioner has been seized. The said device is described as under :

- i) One Mobile Phone- HUAWEI make, Model No. FLA-AL20, MEI No. 869495033588064 & 869495033649403 [Mobile No. 9910058338]

7. The case of the Petitioners is that since now the investigation has been concluded and show cause notices have been issued, the devices



ought to be released to the Petitioners. Hence, the prayer is for release of the electronic devices.

8. On behalf of the Petitioners, Mr. Maggu, Id. Counsel submits that the devices were submitted at the time of the recording of statements and the Petitioners have no objection if the data on the devices is fully copied by the Department.

9. On behalf of the Respondent, Mr. Ojha, Id. Counsel submits that the devices have been cloned, however, in view of objections which could be raised in respect of mode of proof and admissibility at the time when adjudication takes place, the devices have been retained. It is also submitted by Mr. Ojha, Id. Counsel that the Department is in the process of filing prosecution complaints against the Petitioners.

10. The mode and manner of proving electronic data is well-established both under statutes as also in several judgments. Some guidance also exists in the Delhi High Court(OriginalSide) Rules, 2018 which stipulates that electronic documents can be filed as under:

“24. Reception of electronic evidence - A party seeking to tender any electronic record shall do so in a CD/ DVD/ Medium, encrypted with a hash value, the details of which shall be disclosed in a separate memorandum, signed by the party in the form of an affidavit. This will be tendered along with the encrypted CD/ DVD/ Medium in the Registry...”

11. For the said purpose the Respondent may make a proper copy of the data from the mobile phones on a CD/Pen Drive and a hash value may be added to preserve the integrity of the data. The said data can then be furnished at the appropriate stage to the concerned Court or in the show



cause proceedings, in accordance with law.

12. In order to obviate any objections on behalf of the Petitioners in respect of the data which is copied, the Petitioners may appear before the Respondent and the data may be verified when the same is copied, if they so choose to do. Thereafter, the electronic devices may be returned to the Petitioners.

13. Mr. Maggu, Id. Counsel on behalf of the Petitioner submits that the data after being verified and copied by the Department, the Petitioners would not raise any objections for production of the original devices or for the manner of proof of the electronic data. This process shall be undertaken within next four weeks.

14. If any particular document, which is downloaded from the devices of the Petitioners is also relied upon by the Respondent either in the show cause notice proceedings or in the prosecution complaint, the said Relied Upon Documents (hereinafter, 'RUDs') shall be listed and copies shall be provided to the Petitioners. In light of the above, the Petitioner would not raise any objections as to non-fulfilment of any requirement under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 and Section 138C of the Customs Act, 1962.

15. This process could be adopted by the Commissioner of Customs in all the Commissionerates, so that persons from whom devices are seized can be returned the same, after the data is copied. The retention of the devices throughout the Show Cause Notice (hereinafter, 'SCN') proceedings and the prosecutions, unless essential, could then be avoided, as the devices themselves may become completely out-dated and retrieval of data from the same after a few years also becomes difficult. The proper



copying of the data and retention of the same on Servers in the Customs Department would also make it accessible to the investigation officers as also other personnel.

16. Registry is directed to communicate this order to the OSD (Legal) Central Board of Indirect Taxes and Customs (hereinafter, 'CBIC') through email (Osd-legal@gov.in) in order to enable preparation of a Standard Operating Procedure for data retrieval from electronic devices and preservation of the same. Let Mr. Anurag Ojha, Id. Counsel, also communicate this order to OSD (Legal), CBIC for necessary information and compliance

17. Both the petitions are disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 20, 2025/da/ck