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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (CIVIL) NO. 5388 OF 2021**

- Vijay Baid @ Vicky, S/o Shantilal Baid, aged about 36 years, Proprietor of M/s Jewelers Jasraj Shantilal Baid, R/o Nandai Road, Kuwan Chowk, in front of Old Kanji House, Rajnandgaon, Chhattisgarh - 491441.

... **Petitioner****versus**

1. Union of India, through Additional Director, Directorate of Revenue Intelligence (DRI), Government of India, Indore Zonal Unit, 1st Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore, District Indore, Madhya Pradesh - 452001.
2. Deputy Director, Directorate of Revenue Intelligence, Government of India, Raipur Regional Unit, 30, Panchsheel Nagar, Civil Lines, Raipur, District Raipur, Chhattisgarh - 492001.

... **Respondents**

For Petitioner	:	Mr. Vijay M. Adwani, Advocate, along with Mr. Manish Upadhyay, Advocate.
For Respondents	:	Mr. Ramakant Mishra, A.S.G., along with Mr. Tushar Dhar Diwan, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[02.03.2022]**

1. The instant Writ Petition has been filed by the Petitioner challenging the seizure proceeding initiated by the Respondents whereby certain Gold and Silver were seized from the office and residential premises of the Petitioner.

2. Brief facts, as per the Petitioner, are that the Petitioner is a Proprietor of a Jewelry Shop namely "Jewelers Jasraj Shantilal Baid". The office and the residential premises of the Petitioner were searched by Respondent No.2 on 1.5.2021 and 2.5.2021. In the process of search, the Respondent No.2 recovered 4652.235 gram of gold bar and cuttings. Similarly, they also seized 4563.446 gram of fine silver and 407.907 gram



of silver ingots. A Panchnama which was prepared in this regard is Annexure P-1. Petitioner was arrested on 4.5.2021 and he was sent to judicial custody for a period of 60 days by the Trial Court. Thereafter, he was released on bail by the Trial Court.

3. The whole proceeding of search and seizure on the Petitioner's premises was conducted on an incident that took place on 1.5.2021 whereby two persons namely Jijoba Shankar Kadam and Ranjit Phate were intercepted at the Raipur Railway Station and from their possession a huge quantity of Silver and Gold were recovered. Subsequent to the Petitioner being released on bail, the Respondent Authorities have been issuing summons after summons to appear before the Respondents and insisting his presence for interrogation and for further proceeding in the matter. It is this seizure and summoning proceeding initiated by the Respondents which has been questioned by the Petitioner in the instant Writ Petition.

4. Petitioner has sought for the quashment of the seizure proceeding drawn by the Respondents and also sought for an order of restrain against the Respondents from further calling upon the Petitioner for investigation and enquiry.

5. Primary contention put forth by learned Counsel for Petitioner assailing the impugned seizure proceeding is that, the Respondents i.e. the Directorate of Revenue Intelligence (in short, "DRI"), are not authorized for initiating proceeding against the Petitioner under the provisions of the Customs Act, 1962. According to learned Counsel for Petitioner, under the provisions of the Customs Act, it is only the Officers of the Customs Department and who are specifically otherwise notified by the Central Govt. for discharging the functions of the Board or any Officers



of the Customs Department who could initiate the proceedings under the Customs Act. Learned Counsel for Petitioner predominantly relied upon the Judgment rendered by the Hon'ble Supreme Court in the case of **Cannon India Pvt. Ltd. Vs. Commissioner of Customs [AIR 2021 SC 1699]** in support of their contentions. Learned Counsel for Petitioner has also referred to some other Judgments in this regard.

6. Further contention of learned Counsel for Petitioner is that under the provisions of the Customs Act, it is the Officer under the said Act who can initiate proceeding which in the instant case has not been followed. Moreover, the DRI has also not been otherwise entrusted as is required under Section 6 of the Customs Act to discharge the duties and functions of the Board or any Officer of the Customs. According to learned Counsel for Petitioner, in the absence of any entrustment being made by the DRI as is required under Section 6 of the Customs Act, the entire proceeding initiated stands vitiated and the entire proceeding needs to be quashed and interfered with by this Court. Learned Counsel also referred to the definition of "proper officer" as is defined under Section 2(34) of the Customs Act and submitted that the DRI has not been declared to be the "proper officer" for initiating a proceeding under the Customs Act.

7. Per contra, learned Assistant Solicitor General justifying the action of the Respondents referred to a Notification dated 2.5.2012 whereby the DRI has also been notified as "proper officer" under the Customs Act and therefore the proceeding initiated by the DRI does not warrant any interference as it is strictly in accordance with the requirement under the Customs Act.

8. Learned Assistant Solicitor General also submitted that it is not that the entire proceeding just has been drawn by the DRI alone, in the team



which conducted the search there was also this Officer from the Customs Department namely Shri Kujur and therefore also the proceeding cannot be said to be vitiated.

9. For better understanding of the entire issue, it would be relevant at this stage to take note of few of the provisions of the Customs Act. Section 2(34) of the Customs Act defines the “proper officer” which for ready reference is being reproduced below:-

“2. Definitions.-

xxx xxx xxx

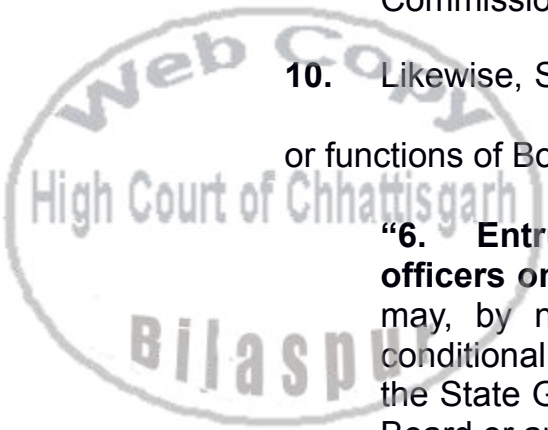
(34) “proper officer”, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs.”

10. Likewise, Section 6 of the Customs Act deals with the “entrustment or functions of Board and customs officers on certain other officers”:-

“6. Entrustment of functions of Board and customs officers on certain other officers.- The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.”

11. Chapter XIII of the Customs Act deals with “Searches, Seizure and Arrest”. Chapter XIII starts from Section 100 and ends to Section 110A. The Sections referred under Chapter XIII prescribe the proper Officer to initiate steps or an Officer of the Customs empowered in this behalf by general and special order to take appropriate recourse under the provisions of Chapter XIII.

12. After the proceeding under Chapter XIII is carried out, comes the question of “Confiscation of improperly imported goods, etc.” and which has been prescribed in Section 111 under Chapter XIV which deals with the “Confiscation of goods and conveyances and imposition of penalties”.





13. Now, coming to the veracity or validity of the proceeding initiated by the DRI, the question to be considered is as to whether the DRI is empowered under the Customs Act to initiate proceeding under Chapter XIII which deals with the Searches, Seizure and Arrest. In this regard, in the preceding paragraphs, two provisions of law have been referred, i.e., the definition of “proper officer” as is defined under Section 2(34) and Section 6 which deals with the entrustment or functions of Board and customs officers or certain other officers.

14. Section 2(34) defines the “proper officer” who could be empowered to discharge the duties under the Customs Act and Section 2(34) predominantly is in respect of the Officer of the Customs Department who is assigned for discharging all those functions by the Board or by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be. This, in other words, also means that under the normal circumstances the “proper officer” under the Customs Act is one who is otherwise an employee of the Customs Department alone and not the officer outside the Customs Department.

15. For a better understanding of the dispute in the present Petition, it would be relevant at this juncture to take note of the contents of Section 6 of the Customs Act. Section 6 has the provision under the Customs Act which empowers the Central Government by way of a Notification in the Official Gazette to entrust conditionally or unconditionally any Officer of the Central Government or the State Government or a local Authority for the purpose of all functions to be discharged that of the Board or any Officer of the Customs.

16. Plain reading of Section 6 itself clearly reflect that for the purpose of any Officer of the Central or the State Government other than those



assigned under the Customs Act and in respect of the Officer other than the Customs Department, there has to be a specific Notification issued by the Central Government and that which has to be also notified in the Official Gazette.

17. Plain reading of Section 6 would further lead us to draw a safest of inferences that in order to initiate a proceeding under the Customs Act by an Officer or a Department other than the Officer of the Customs and the Customs Department, there has to be a specific Notification issued by the Central Government and which is also to be published in the Official Gazette.

18. In the instant case, when we peruse the pleadings, reply and the documents produced by the Respondents, the only Notification on which the Respondents have relied upon is the Notification dated 2.5.2012 which has been brought on record vide Covering Memo dated 17.2.2022.

It would be relevant at this juncture to also take note of the contents of the said Notification dated 2.5.2012. For ready reference, the relevant contents of the said Notification are reproduced below:-

“In exercise of the powers conferred by sub-section (34) of section 2 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs, hereby assigns the officers and above the rank of officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Customs Act, 1962, given in the corresponding entry in Column (3) of the said Table:-”

19. Plain reading of the aforesaid contents of the Notification dated 2.5.2012 makes it evident that the said Notification is only a Notification under Section 2(34) of the Customs Act. This would also make clear that the Respondents have not been able to produce any Notification issued by the Central Government published in the Official Gazette under Section 6 of the Customs Act empowering the DRI also to exercise the functions



of the Board or any Officer of the Board or any Officer of the Customs under the Customs Act.

20. This Court is under the given circumstances forced to infer that in fact in the instant case there is no Notification issued under Section 6 of the Customs Act entrusting the functions under the Customs Act also upon the Officers of the DRI.

21. It would now be relevant to take note of the main Judgment relied upon by learned Counsel for Petitioner i.e. **Canon India Pvt. Ltd. Vs. Commissioner of Customs** (supra). It is pertinent to take note of the fact that even in the said Judgment there is a reference to the Notification heavily relied upon by the Respondents, i.e., the Notification dated 2.5.2012. That in addition there was also the consideration and deliberation on Section 6 of the Customs Act *qua* the Notification dated 2.5.2012. Dealing with the aforesaid situation and touching the issue in the present case, the relevant portions of Paragraphs – 18, 19, 20, 21 & 23 of the Judgment of **Canon India Pvt. Ltd.** (supra) are reproduced herein under :-

“18. The next step is to see whether an Additional Director General of the DRI who has been appointed as an officer of Customs, under the notification dated 7.3.2002, has been entrusted with the functions under Section 28 as a proper officer under the Customs Act. In support of the contention that he has been so entrusted with the functions of a proper officer under Section 28 of the Customs Act, Shri Sanjay Jain, learned Additional Solicitor General relied on a Notification No.40/2012 dated 2.5.2012 issued by the Central Board of Excise and Customs. The notification confers various functions referred to in Column (3) of the notification under the Customs Act on officers referred to in Column (2)....

19. It appears that a Deputy Commissioner or Assistant Commissioner of Customs has been entrusted with the functions under Section 28, vide Sl. No.3 above. By reason of the fact that the functions are assigned to officers referred to in Column (3) and those officers above the rank of officers



mentioned in Column (2), the Commissioner of Customs would be included as an officer entitled to perform the function under Section 28 of the Act conferred on a Deputy Commissioner or Assistant Commissioner but the notification appears to be ill-founded. The notification is purported to have been issued in exercise of powers under sub-Section (34) of Section 2 of the Customs Act. This section does not confer any powers on any authority to entrust any functions to officers. The sub-Section is part of the definitions clause of the Act, it merely defines a proper officer, it reads as follows:-

“2. Definitions – In this Act, unless the context otherwise requires, -

... (34) ‘proper officer’, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the [Principal Commissioner of Customs or Commissioner of Customs].”

20. Section 6 is the only Section which provides for entrustment of functions of Customs officer on other officers of the Central or the State Government or local authority, it reads as follows:-

“6. Entrustment of functions of Board and customs officers on certain other officers – The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.”

21. If it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The reason why such a power is conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 04.12.1957 issued by the Ministry of Finance and Customs officers who, till 11.5.2002, were appointed by the Central Government. The notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2 (34) of the Customs Act. The notification is obviously invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.

23. We, therefore, hold that the entire proceeding in the present case initiated by the Additional Director General of the





DRI by issuing show cause notices in all the matters before us are invalid without any authority of law and liable to be set-aside and the ensuing demands are also set-aside.

22. The aforesaid principles and analogy laid down by the Hon'ble Supreme Court has been recently again reiterated by the Hon'ble Supreme Court in one of its very recent **Order dated 20.1.2022** passed in the case of "**Commissioner of Customs, Ahmedabad Vs. M/s Suncity Strips and Tubes P. Ltd.**" Civil Appeal No. of 2022 (Diary No. 7082/2020). The relevant Paragraphs of the said Order are also being reproduced herein below :-

"2. In **Canon India Private Limited vs Commissioner of Customs AIR 2021 SC 1699**, a three-Judge Bench of this Court has held that in the absence of an entrustment under Section 6 of the Customs Act 1962, an officer of the Directorate of Revenue Intelligence will not have jurisdiction to exercise the functions entrusted to Customs Officers under the provisions of the Act. As a consequence of the above elucidation, the Court held that the entire proceeding which was initiated by the Additional Director General of the Directorate of Revenue Intelligence by issuing show cause notices was invalid.

3. In the present case, the notice to show cause dated 30 October 2013 raising demands under the Customs Act 1962 was issued by the Additional Director General of the Directorate of Revenue Intelligence (Zonal Unit, Ahmedabad).

4. In view of the decision of the three-Judge Bench in **Canon India Private Limited** (supra), the appeal which has been filed by the Commissioner of Customs in the present case will have to be and is accordingly dismissed.

5. Since the appeal has been dismissed on the above ground, it has not become necessary to express any opinion on the merits of the judgment of the Custom Excise Service Tax Appellate Tribunal dated 5 August 2019."

23. The Division Bench of the Bombay High Court also had an occasion of dealing with a similar issue in **WP No.5154/2021 [Kitchen Essentials & Ors. Vs. The Union of India & Ors.]** decided on **26.10.2021** wherein the challenge was to the proceeding initiated by the DRI asking the Petitioners therein to provide the details of the imports



made by them and other information. In this connection, in Paragraphs - 10, 11, & 12 of the said Judgment it was held as under :-

“10. Having gone through the decision of the Hon'ble Supreme Court in the case of **M/s. Canon India Private Limited** (supra), we find that the issue raised in the present writ petition is squarely covered by such decision. The show cause notice in the present case is also issued by the respondent No.2 - Joint Director, DRI, Mumbai, who is not a proper officer within the meaning of Section 28(4) read with Section 2 (34) of the said Act.

11. Additionally, a profitable reference also needs to be made to the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs, Kandla vs. M/s. Agarwal Metals and Alloys**. Their Lordships in view of the decision in **M/s. Canon India Private Limited** (supra) dismissed the appeals filed by the Commissioner of Customs. The order reads thus :

"Delay condoned.

In view of decision dated 09.03.2021 of three judge Bench of this Court in Civil Appeal No. 1827 of 2018 titled as "*M/s. Canon India Private Ltd. vs. Commissioner of Customs*" reported in 2021 (3) SCALE 748, these appeals must fail as the show cause notice (s) in the present cases was also issued by Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), who is not a proper officer within the meaning of Section 28(4) read with Section 2 (34) of the Customs Act, 1962.

Hence, these appeals stand dismissed.

However, dismissal of these appeals will not come in the way of the competent authority to proceed in the matter in accordance with law.

Pending application(s), if any, stand disposed of"

12. In the light of the decisions of the Hon'ble Supreme Court referred to herein above, we have no hesitation in holding that the entire proceedings in the present case initiated by the respondent No. 2 - Joint Director, DRI, Mumbai, by issuing the show cause notice are invalid, without any authority of law and liable to be set aside and ensuing demands are also liable to be set aside.”

24. In yet another similar matter, the High Court of Delhi in the case of **“M/s Rani Enterprises Vs. Principal Commissioner of Customs, ICD**



Pratapganj & Ors.” decided on **12.10.2021** in **WP(C) No.11721/2021**,

has in Paragraphs- 5 & 8 held as under:-

“5. Learned counsel contends that Section 110 of the Customs Act, 1962 deals with seizure of goods and documents and a bare perusal of the provisions of the said Section makes it clear that the goods may be seized by ‘Proper Officer’ and the said term has been defined under Section 2(34) of the Customs Act, 1962. ‘Proper Officer’, therefore, for performing any function under the said Act means ‘the officer of Customs who is assigned those functions by the Board’, meaning thereby that to be a Proper Officer, the Officer must be a Customs Officer, while in the present case, Investigating Officer of DRI is not a Custom Officer and therefore, not a Proper Officer, so as to be entitled to seize the goods. In support of his contention, learned counsel relies on the judgment of the Hon’ble Supreme Court in Canon India (supra), more particularly, para 21 thereof. It is contended that despite the clear pronouncement of law on this aspect, Respondents are acting contrary to the law laid down by the Hon’ble Supreme Court and hence, the Petitioner has no option but to approach this Court.

8. It is rather unfortunate that despite a clear enunciation and pronouncement of the law on the aspect of ‘Proper Officer’ under Section 110 of the Customs Act, the concerned officials of the Respondents are repeatedly seizing goods without having the authority and jurisdiction to do so. Perhaps, the judgment in Canon India (supra), has not been either read by the concerned officials or has not been understood in the correct perspective. As a result, this Court is flooded with litigation on the same issue and we cannot help but observe that it is the action of the Respondents in not applying the binding dicta of the Hon’ble Supreme Court, which is breeding unnecessary litigation.

25. The Delhi High Court on an earlier occasion also had in a similar matter in the case of “**Gopal Gupta Vs. Principal Additional Director General, Directorate of Revenue Intelligence, New Delhi**” decided on **12.4.2021** in **W.P.(CRL) No.821/2021**, has in Paragraph-1, while considering the application for grant of interim relief, held as follows:-

“1. By this petition, the petitioner challenges the Show Cause Notice dated 26th September, 2019 issued to the petitioner subsequent to the arrest, search and seizure dated 24th April, 2019 and 25th April, 2019 as also seeks setting aside of the proceedings under Sections 104, 100//102, 105, 110 and 124 of the Customs Act and the proceedings emanating therefrom, in view of the decision of the Hon’ble



Supreme Court rendered in Civil Appeal No.1827/2018 titled as M/s Canon India Private Limited vs. Commissioner of Customs decided on 9th March, 2021, wherein the Hon'ble Supreme Court categorically held that if it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its powers under Section 6 of the Act. Dealing with the notification dated 2nd May, 2012, relied upon by the respondent, which confers the various functions referred to in Column (3) of the notification under the Customs Act on officers referred to in Column (2), the Hon'ble Supreme Court held that the Section under which the notification has been issued does not confer any power on any authority to entrust any functions to the officers. It was also held that the notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2 (34) of the Customs Act, hence was invalid."

26. Coming to the facts of the present case, admittedly, the proceeding initiated against the Petitioner is by the DRI. From the documents enclosed also, there is no dispute to the fact that the proceeding is not by the Customs Department or the officials of the Customs Department. Merely because one of the Officers in the search and seizure proceeding belongs to the Customs Department does not mean that the proceeding has been drawn by the Customs Department. All the proceedings in the instant case have been from the office of the DRI. It was never the case of the Respondents that the proceeding not being from the Department of DRI or for that matter the proceedings being drawn by the Customs Department.

27. In the given factual matrix of the case, the plea and the defence taken by learned Assistant Solicitor General or for that matter the Department of DRI are not sustainable nor do it have any substantial force, particularly in the light of the authoritative judicial precedents laid



down by the Hon'ble Supreme Court and by various High Courts in India, a few of which have been referred to in the preceding paragraphs.

28. In view of above, this Court is inclined to allow the present Writ Petition and to hold that the issuance of Notice dated 29.10.2021 (Annexure P-3) issued under Section 110(2) of the Customs Act, 1962 and the subsequent Notices/Summons issued to the Petitioner are all without any authority of law and are therefore not sustainable.

29. As a consequence, the Writ Petition is allowed and the Notices/Summons issued to the Petitioner by the Respondents deserve to be and are accordingly quashed/set aside including the seizure and the Panchnama, with consequences to follow.

30. Writ Petition accordingly stands allowed and disposed of.

No orders as to cost(s).

Sd/-
(P. Sam Koshy)
Judge

/sbarad/

Bilaspur