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

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Date of Decision: 03.05.2023

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W.P.(C) 16818/2022 and CM APPL. 53136/2022

GANESH SAWANT

..... Petitioner

Through: Mr Rahul Raheja and Mr
Gaurav Prakash, Advocates.

versus

COMMISSIONER OF CUSTOMS
(APPEALS) & ORS.

..... Respondents

Through: Ms Anushree Narain, Standing
Counsel for R-1 & 2 with Mr
Mayank Srivastava, Advocate.
Mr Harpreet Singh, Senior
Standing Counsel with Ms
Suhani Mathur, Advocate for R-
3.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (Oral)**

1. The petitioner has filed the present petition being aggrieved by the Commissioner of Customs (Appeals) concluding the proceedings under Section 110(1D) of the Customs Act, 1962 (hereafter '**the Customs Act**') without issuing any notice of the proceedings to the petitioner.

2. The petitioner claims that he is, *inter alia*, engaged in the

business of manufacturing gold jewelry and selling the same in the domestic market. He states that he carries on the business in the name and style of a sole proprietorship concern named M/s Tanishka Bullions and Jewells. He states that although the said concern is registered with the Goods and Services Tax Department in the name of his wife, he is responsible for carrying on the day-to day affairs of the concern.

3. On 20.02.2021, the officers of the Directorate of Revenue Intelligence (DRI) had stopped the petitioner's car on NH-24. The said vehicle was searched and five gold bars weighing 1000 grams each were found. The said goods were seized by the said officers under Section 110 of the Customs Act. A *panchnama* for the said seizure was drawn up on the same date.

4. Subsequently, an appraiser appraised the said goods (five gold bars of 1000 grams each) at a tariff value of ₹2,15,57,250/- (Rupees two crores fifteen lacs fifty seven thousand two hundred and fifty only). The market value of the said goods was determined at ₹2,34,00,000/- (Rupees two crores thirty four lacs only). Thereafter, a show cause notice dated 16.08.2021 was issued, *inter alia*, to the petitioner.

5. Subsequently, on 14.10.2021, the respondents returned four gold bars, which were seized on 20.02.2021. The controversy, thus, relates to a single gold bar of 1000 grams, which continued to be retained by the concerned authorities.

6. It is stated that the proceedings under Section 110(1D) of the Customs Act were conducted by the Commissioner of Customs

(Appeals) on 21.11.2022 and the seized inventory was certified. Further, by an order dated 24.11.2022, the respondents were also granted permission for disposal of the seized gold.

7. Thereafter, the respondents issued a notice dated 25.11.2022 under Section 150 of the Customs Act informing the addressees, including the petitioner, that proceedings under Section 110(1D) of the Customs Act were completed on 21.11.2022, and by an order dated 24.11.2022, the Commissioner (Appeals), New Delhi had confirmed and certified the inventories mentioned in the *panchnama*. The seizing authorities had also issued an RFD (Ripe for Disposal) Certificate. Pursuant to the same, the disposal section of the Customs Department was in the process of disposing of and selling 2000 grams of gold bars, which included 1000 grams of gold seized by the officials of the DRI on 20.02.2021.

8. This Court is informed that the good in question (gold bar weighing 1000 grams) has since been disposed of.

9. The petitioner has impugned the said notice dated 25.11.2022 issued under Section 150 of the Customs Act. The petitioner also prays that directions be issued to the respondents to conduct proceedings under Section 110(1D) of the Customs Act, *de novo*.

10. Plainly, the relief, as sought for, cannot be granted. There is no infirmity in the notice dated 25.11.2022 issued under Section 150 of the Customs Act. The gold bar in question has since been disposed of and therefore, no order can be passed directing the Commissioner of

Customs (Appeals) to once again conduct the proceedings under Section 110(1D) of the Customs Act. This Court had, in the order dated 17.02.2023, observed that the prayers made in the present petition do not survive. However, the petition was not disposed of as this Court considered it apposite to examine the question regarding the interpretation of Section 110(1D) of the Customs Act. This was in the context of the petitioner's contention that notice under Section 110(1D) of the Customs Act was required to be issued to the petitioner in view of the decision of the Coordinate Bench of this Court in *Pradeep Khandelwal v. Commissioner of Customs (Appeals) & Anr.: 2022 SCC OnLine Del 1294*. The learned counsel for the respondents had contested the said contention. They contended that the order passed in the case of *Pradeep Khandelwal v. Commissioner of Customs (Appeals) & Anr. (supra)* was on a concession made by the counsel appearing in that case and that the said decision was not a binding precedent.

11. Ms Narain and Mr Harpreet Singh, learned counsel appearing for the respondents, submitted that Section 110(1D) of the Customs Act does not require any notice to be served on the person from whom the goods are seized. Therefore, respondent no.1 could not be faulted for concluding the proceedings under Section 110(1D) of the Customs Act, without any notice to the petitioner.

12. Sub-section (1D) of Section 110 of the Customs Act was introduced by the Finance Act, 2021 (Act 13 of 2021) with effect from 28.03.2021. Prior to the insertion of the said Sub-section, the proper

officer was required to make an application to a Magistrate under Section 110(1B) of the Customs Act, for the purposes of certifying the correctness of the inventory; taking photographs of the goods in presence of the Magistrate; and to draw representative samples of such goods.

13. Sub-sections (1A), 1(B), (1C) and (1D) of Section 110 of the Customs Act are relevant and are set out below for ready reference:

“(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of –

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(1D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.”

14. With the introduction of Sub-section (1D) in Section 110 of the Customs Act, Commissioner (Appeals) was specified as the concerned authority in respect of seized gold in any form. The proper officer is now required to make an application to the Commissioner (Appeals) having jurisdiction instead of the Magistrate under Sub-section (1B) in respect of gold in any form, which is seized under Section 110(1) of the Customs Act.

15. In *Ishwar Parasram Punjabi v. Union of India: 1990 (48) E.L.T. 224 (Del.)*, this Court had, *inter alia*, considered the question whether notice of proceeding under Section 110(1B) of the Customs Act was required to be issued to the owner or the persons from whom the goods were seized. In that case, the Court had rejected the Revenue's contention that no notice of proceedings under sub-section (1B) was required to be issued as neither Sub-section (1B) nor Sub-section (1C) of Section 110 of the Customs Act mandated issuance of any such notice to be served to the owner or the person from whom the goods are seized. The relevant extract from the said decision reads as under:

“15. From a cumulative reading of these provisions it is clear that the preparation of inventory or other steps contemplated under sub-section (1-B), to be certified by the magistrate, such as taking of photographs or drawing of representative samples or certifying the correctness of the photographs, etc. related to the main object of disposal of the property in terms of section 110 (I-A) of the Customs Act.

16. Mr. Herjinder Singh has a valid argument when he contends that the disposal of the case property can have very grave implications for an accused inasmuch as it may vitally affect his defence that might be open to him, on facts or law, on even as to identity or description of the case property, or as in this case, he has urged, *inter alia*, that the seizing officer was not the proper officer within the meaning of relevant provisions of Customs Act, and that as such any proposal to dispose it off or any order which has an implication of being a step in aid towards that direction, carry the inherent obligation that the person from whom the property is alleged to have been seized is given notice of the application moved by the Customs Department and be heard before an order is passed thereon, and that this would be so even if there is no express provision for a notice of hearing in the relevant provisions because on the authority of the Supreme Court judgments quoted above, such a requirement has to be read into the provisions of law.

17. Mr. Satish Aggarwal, appearing for the respondents practically had no answer to these contentions except for reiterating that the terms of the Statute are very plain and there was no requirement of a notice of hearing and further in terms of sub-section (1-C) of section 110 of the Act, an application ought to be allowed by the magistrate on being made and as such there was no discretion left with him to follow any other procedure and that the order passed did not contemplate any judicial function and that the arguments based on requirement of fair trial or principle of natural justice were not applicable to cases such as the present one. He however interestingly enough conceded that in similar applications, now being made to the magistrate, the department is itself seeking issuance of notice. He could not give any satisfactory reply as to why in the present case there was insistence on a different practice being adopted by the department, to the effect that no notice of hearing was required to be given.

18. The arguments canvassed by Mr. Aggarwal based to the effect that the Statute does not provide for any notice of hearing, do not have any tenability in face of the judgment by Constitutional Bench of the Supreme Court in the case of *Smt. Maneka Gandhi* (supra) that even if the statutory provisions do not provide for hearing of notice; principles of natural justice enjoin upon the concerned authority to adopt a procedure for disposing of any matter, where any party is affected or is likely to be affected, after notice to show cause, and hearing. This principle has been extended by the Supreme Court even to the provisions of the COFEPOSA Act in the case of *Harbans Lal* (supra) where it was held that even though there were no provisions for production of evidence by the detenu in rebuttal, before the Advisory Board, but such a right must be implied unless there was an express prohibition.

19. Even in relation to the provisions of the Customs Act, there is a decision of a Division Bench of Calcutta High Court, reported as AIR 1968 Calcutta 28, (*Charandas Malhotra v. Assistant Collector of Customs and Superintendent Preventive Services and Others*), with reference to the provisions of Section 110(2) of the Customs Act, in respect of the notice under section 124 of the Act, providing that period of six months in issuing such a notice may be extended further by the Collector of Customs for a period up to 6 months, on sufficient cause being shown. It was held that since the extension of time for issuing show cause notice, affects vested rights of the person, from whom the goods were seized, inasmuch as in the absence of extension and no show cause notice having been issued within the original period, he is entitled to the release of goods; hearing to such a person is necessary before considering the request for extension of time.

20. I am therefore of my firm view that it is not open to the Customs Department to contend that the application moved under Section 110 (1-B) of the Customs Act; with implicit object of disposal of goods in exercise of the powers under Section 110 (1-A) of the Customs Act can be disposed of by the magistrate without notice to the accused or any other person from whom goods may have been seized. The department itself seems to have realised this mistake, and in fresh matters notice are being issued at the instance of the department itself, as stated during hearing of this petition.

21. I therefore hold that petitioner's contention is justified to the effect that the order passed by the learned Metropolitan Magistrate without notice to him, on application under section 110 (1-A) of the Customs Act, dated 20th April, 1989, was not sustainable, because it stands vitiated owing to the lapse committed in not affording opportunity of hearing, or showing cause against such an application being allowed."

16. In ***Pradeep Khandelwal v. Commissioner of Customs (Appeals) & Anr.*** (*supra*), this Court had reiterated the above principle in the following words:

"4. In an exercise of this nature, the law would oblige adherence to principals of natural justice [i.e. notice and participation in the exercise] especially given the fact that there is no express exclusion in the Act."

17. In view of the above, we find no merit in the contention that no notice is required to be served of the proceedings under Section 110(1D) of the Customs Act. As noted above, Sub-section (1D) of Section 110 of the Customs Act was introduced to substitute the authority before whom an application for certifying the correctness of the inventory; taking photographs of the seized goods; and drawing representative samples is required to be made. In respect of seized gold, the proper officer is required to make an application before the Commissioner (Appeals) having jurisdiction instead of the Magistrate as required under Sub-section (1B) to Section 110 of the Customs Act. Although the authority before whom an application is to be made was substituted, there was no amendment in the procedure to be followed. Thus, the decision in the case of ***Ishwar Parasram Punjabi v. Union of India*** (*supra*) applies equally to proceedings under Section 110(1D) of the Customs Act.

18. We are unable to accept that the decision in *Pradeep Khandelwal v. Commissioner of Customs (Appeals) & Anr. (supra)* is not a binding precedent. The said decision does not rest on any concession made by the counsel for the respondents but on well-established requirements of principles of natural justice.

19. Although the petitioner is entitled to insist that the proceedings under Section 110(1D) of the Customs Act be conducted *de novo* – as directed by the Court in the case of *Pradeep Khandelwal v. Commissioner of Customs (Appeals) & Anr. (supra)* – no such orders are warranted in this case as the goods in question have already been sold.

20. The petition is disposed of with the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 3, 2023
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