(2018) 05 DEL CK 0464

In the Delhi High Court

Case No : W.P. (CRL) 1338 OF 2018

FARHA HUSSAIN APPELLANT

Vs

UNION OF INDIA & ORS. RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Act — Section 3(1)
Customs Act, 1962 — Section 108
Indian Penal Code,1860 — Section 172, 174, 175
Constitution of India, 1950 — Article 226

Citation : (2018) 05 DEL CK 0464

Hon'ble Judges : S. Muralidhar, J;I.S. Mehta, J

Bench : Division Bench

Advocate : Priyadarshi Manish, Anjali J. Manish, Sagar Rohatgi, Gigi. C George, Brajesh Kumar, Sanjeev Narula, Abhishek Ghai

Final Decision : Allowed

Judgement

1. This is a petition under Article 226 of the Constitution of India filed by the wife of Mr. Sharafat Hussain (hereafter â??the Detenueâ??) seeking

the quashing of a detention order No. F. No. PD/12002/01/2017-COFEPOSA dated 2nd January 2018, issued by the Joint Secretary to the

Government of India, COFEPOSA Unit, Central Economic Intelligence Bureau in the Department of Revenue, Ministry of Finance, Government of

India under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA Act) by which the Detenue was

ordered to be detained and kept in Tihar Jail, New Delhi.

2. It must be mentioned at the outset that the aforementioned detention order stood confirmed by the Advisory Board in terms of a Report dated 16th

March, 2018 and the said decision was communicated to the Detenue by a

Memorandum dated 21st March, 2018 issued by the Deputy Secretary,

COFEPOSA stating that his representation dated 24th January, 2018 had been rejected. This Memorandum was served on the Detenue in the Tihar

Jail on 23rd March, 2018. On an oral prayer, the Court has permitted the Petitioner to challenge the said memorandum dated 21st March 2018 in these

proceedings.

Background

3. The background to the present petition is that the Director General of Foreign Trade (â??DGFTâ??), Ministry of Commerce issues licenses to

exporters in various schemes as an incentive to them for making exports and increasing quantum of the same. The licenses are also called

â??scriptsâ?? and carry a monetary value. They can be utilized for payment of import duty or for the import of any item which is in the Open

General List (â??OGLâ??) i.e. freely importable. These scripts are a tradable commodity by themselves. The scripts have to be registered by

exporters with the Customs Department on the Electronic Data Interface (â??EDIâ??).

4. The procedure that is envisaged is that in order to utilize the scripts/ license, the license holder/authorized representative has to present it to the

License Section along with a request letter for endorsement of â??no alterâ??.

The scripts are entered into the electronic system of the Customs Department only after the Superintendent In-Charge enters the authorization code

which is verified by an officer of the rank of Deputy Commissioner/Joint Commissioner of Customs. Thereafter, the scripts can only be entered after

verification by two passwords which are changed once in a fortnight by the Superintendent. A new Superintendent who takes over gets a new

password which is issued to him. Instructions have been issued by the Directorate of Systems, Customs and Central Excise Department in this regard

on 5th August, 2001.

5. For clearing of shipments and use of scripts for payment of duty, a separate portal is used by the traders and vendors. It is explained in the petition

that the above portal cannot be accessed by outsiders, including the license holders themselves. Any use of the scripts for payment of import duty is

verified by at least by five officers of the Department including three IRS rank officers and an Inspector and a Superintendent at five different stages.

In the second stage of verification, the scrip is forwarded to the Customs Cell for physical verification which is done by a group of officers from the

entries in the computer system using their exclusive passwords.

Â Facts concerning the Detenue

6. The Detenue is a Customs House Agent (CHA) carrying on business in the name of M/s. Zealous International. He is said to have been working

as such for more than 17 years. He was working as a Sub-Agent of M/s Kirti Cargo and was a G-Card Holder in the said concern. M/s. Zealous

International was engaged in the business of sale and purchase of scripts and advance licenses.

7. The Detenue also has other firms and companies i.e. M/s. Fiber Tech Impex, M/s. Fiber Tech Exim, M/s. Zealous Impex and M/s. Zealous

Overseas Pvt. Ltd., which also trade in scripts and advance licenses. After purchasing scripts/advance licenses from various vendors in the open

market, the Detenue would also use them on payment of import duty for import of goods of his clients for whom he was undertaking the task of

custom clearance as a CHA.

Â 8. According to the Petitioner, the Detenue was contacted by Mr. Vinod Kumar Pathror, who claimed to have his own business of sale and

purchase of scripts. Mr. Pathror was carrying on business through various firms such as M/s. Mahi Impex, M/s. HMR International, M/s. Mahi

International and M/s, Rudraksh International. It is stated that the Detenue bonafide purchased scripts/licenses from the various firms of Mr. Pathror

against payments.

9. According to the Petitioner, in September 2015, the Detenue came to know about the alleged fraud involving the scripts and the consequent

initiation of enquiry proceedings by the customs officials regarding hacking of the customs system and passwords of the officers of the Customs

Department. The Detenue, as a G-Card holder of M/s. Kirti Cargo, was informed by the customs officials about the fraudulent use and tampering of

some of the scripts. He was advised by them to deposit some ad hoc duty which would be refunded after completion of enquiry.

10. The Petitioner claims that as advised by the custom officials, he deposited an ad hoc duty of Rs.1.25 crores on 16th September 2015. On 18th

October 2015, he further deposited Rs.79,04,500/-; and in November, 2015, Rs.55,00,000/-. Thus, in aggregate, a total sum of Rs.259,04,500/- was deposited.

11. Mr. Ramesh Chadha was the Proprietor of M/s Kirti Cargo. In the enquiry under Section 108 of the Customs Act, on 15th September 2015, Mr Chadha disclosed that his firm had nine G-Card Holders of whom five, viz., the Detenue, Mr Man Mohan, Mr Roop Tanwar, Mr Vikas Kohli and Mr R.K. Tiwari used to come for clearance at the ICD Tughlakabad, New Delhi. Specific to imports of paper consignment, Mr Chadha stated that the clearances were being done by the Detenue, Mr Man Mohan and Mr Roop Tanwar. The Petitioner states that the Detenue had gone to his home town to attend the funeral of his mother, who had expired in January, 2016. On returning to Delhi in mid February, he was shocked to find his residence and office premises locked. Paper seals were affixed stating that the keys of the locks were with the customs officials, SIIB Branch, ICD Tughlakabad, New Delhi.

Criminal complaint by the Department

12. Shortly prior to this, on 23rd December 2015, a criminal complaint was filed by the Customs Department against the Detenue under Sections 172, 174 and 175 of the Indian Penal Code (â??IPCâ??). Although the Detenue was not aware of the above development at that stage, he came to know of it subsequently. The orders passed by the Additional Chief Metropolitan Magistrate-02 (â??ACMM-02â??) in the said Criminal Complaint No.10/2016 from 18th January, 2016 onwards have been placed on record. It reveals that from time to time, adjournments were sought on behalf of the Customs Department for leading pre-summoning evidence to establish that despite service of summons, the Detenue was not appearing before the Customs Department.

13. At one stage on 17th October, 2017, an application was filed by the Detenue before the learned ACMM-02 seeking dismissal of the complaint. However, this application was rejected as not maintainable by an order passed on the same day, the learned ACMM-02 dismissed the application as being not maintainable since the Detenue had not yet been summoned in the said case.

14. Meanwhile, in order to demonstrate his bonafides, the Detenue on 9th May 2016 voluntarily sent a statement under Section 108 of the Customs

Act, 1962 ('Act') and clarified his position. Thereafter, by order dated 9th June 2016 issued by the Commissioner of Customs (General), the license of

M/s Kirti Cargo was revoked. It is stated that the Detenue, voluntarily sent another statement under Section 108 of the Act again on 16th July 2016.

15. It is stated that on 21st July, 2016 another summons were sent to the Detenue through counsel by the Customs Department requesting for relevant

documents. According to the Detenue, the Department had already seized all the documents from his residence and office which had been sealed by

them. A copy of the letter dated 3rd August, 2016 addressed by the Inspector of Customs to the Superintendent of Customs (â??SIIBâ??)

forwarding the Detenueâ??s statement under Section 108 of the Act was received by the Detenue. The complaint filed by the Customs Department

with the Economic Offences Wing (â??EOWâ??) led to the registration of FIR No.151 dated 19th September, 2016 with the Cyber Crime Cell

(â??CCCâ??), EOW, Delhi Police.

16. On 15th November 2017, the statement of the Detenue was recorded by the Department where he again explained the whole process. Thereafter

on 16th November 2017, the Detenue was arrested. Inter alia the grounds of his arrest were that investigation in respect of 33 importers who had

used fraudulent licences had concluded. Thirty three show cause notices (â??SCNsâ??) involving a custom duty of Rs.73.35 crores were issued.

These included the Detenue as a noticee.

Detenueâ??s bail applications

17. By an order dated 12th December, 2017, the learned ACMM rejected the application for bail of the Detenue on the ground that alleged evasion of

duty was about Rs.100 crores; that the investigation was at its initial stage and the role of other persons was yet to be worked out.

18. On 2nd January 2018, the Detenue filed another bail application before the learned Sessions Judge. By an order dated 4th January, 2018, the

learned Sessions Judge granted bail to the Detenue after noting that recoveries had already been made from the Applicant, he had been in custody for

50 days and there was no previous involvement.

19. Immediately on 5th January, 2018, the Petitioner i.e. the wife of the Detenue was informed by the Additional Commissioner of Customs that the

Detenue had been detained under Section 3(1) of the COFEPOSA Act and had been kept in Tihar Jail.

The Departmentâ??s SCN

20. Meanwhile, on 20th December 2017, the Directorate of Revenue Intelligence (â??DRIâ??) issued a SCN under Section 28 (4) of the Act to 209

importers and 16 customs brokers including M/s Kirti Cargo which was noticee No.214. According to the SCN, the duty which was debited using

forged scripts worked out to Rs.7,29,72,891/-. However, the alleged evasion by M/s Kirti Cargo using forged scripts was to the tune of Rs.46,482/-.

21. The SCN further noted that M/s Shyama Corporation and M/s Kritika Enterprises were the two entities who had paid custom duty using these

scripts and that it was Mr Divakar Sharma, a G-Card Holder who had filed the import documents on behalf of the respective importers. The alleged

duty scripts used by M/s Kirti Cargo were in fact used the G-Card Holder Mr Diwakar Sharma and not the Detenue. Further, the actual amount

involved was Rs.46,482/-. It is pointed out by the Petitioner despite this, the Customs Department at the time of opposing the Detenueâ??s bail

application, contended that the duty evasion was to the extent of Rs. 100 crores.

Rejection of the Detenueâ??s representation

22. A representation was filed by the Detenue on 24th January 2018, inter alia, pointing out that there had been delay of more than 27 months and 17

days since 15th September, 2015 when the SIIB was supposed to have become aware of the fraudulent use of the licenses/scripts and begun their

investigation. Further, it was not the case of the SIIB that the Detenue had committed any prejudicial activity after 15th September, 2015 till the date

of his arrest on 15th November, 2015. Also, the Department had not produced any proof of service of summons upon the Detenue to substantiate the

plea that he was avoiding summons. The fact that he had paid Rs.2.59 crores under protest on the oral demand of the Customs officials was not taken

into account while passing the detention order. However, the Advisory Board by Memorandum dated 21st March, 2018 rejected the representation

and by an order dated 23rd March, 2018 confirmed the detention of the Detenue for a period of one year.

23. Notice in this petition was issued on 1st May, 2018. By an order dated 4th May, 2018 the detention order dated 2nd January 2018, which had

inadvertently been left out from being enclosed with the petition, was taken on record by the Court.

Reply of the Respondents

24. A counter affidavit has been filed on behalf of the Respondent Nos. 1 and 2 and a separate one by the Respondent No.3. Inter alia, it is pointed

out that Mr Ramesh Chadha, proprietor of M/s Kirti Cargo in his voluntary statement dated 15th September, 2015 had stated that the Detenue was

looking after the entire work related to paper consignments. It was found that the Detenue, a G-Card Holder of the aforesaid CHA firm was also

engaged with the sale/purchase of licenses through his company M/s Zealous Overseas Pvt. Ltd. among other firms. According to the Respondents it

was revealed that the Detenue had got the license particulars amended fraudulently in the EDI system with the help of Mr Vinod Kumar Pathror, who

while posing as an employee of M/s Kirti Cargo used to enter the Export Promotion Measures (â??Ã?PMâ??) Branch of the ICD Tughlakabad and

â??may have used the user ID and passwords of the officers who were working in the said Branch to access the EDI System.â??

25. It is stated that the Detenue was summoned many times between 21st September and 21st October, 2015, but he deliberately avoided participating

in the investigation. A copy of the criminal complaint filed under Sections 172, 174 and 175 IPC before the CMM, Patiala House Courts on 23rd

December, 2015 against the Detenue has been enclosed with the counter affidavit. It is alleged that the Detenue hacked the system and caused a loss

of total custom duty of Rs.73.35 crores. It is stated that since the Detenue was absconding since September 2015 and did not cooperate in the

investigation despite summons, he was arrested on 15th November, 2017. It is stated that the Detenue â??is still believed to be in possession of

substantial number of fraudulently generated licenses/scripts which he can trade in the marketâ?. He could also not produce any documents to prove

that he had purchased the tampered non-existent licenses /scripts from Mr Vinod Kumar Pathror, who had not joined the investigation till date and

was declared as proclaimed offender (â??PO') by the ACMM by an order dated 4th May, 2017.

26. In the reply of the Respondent No.3, it is submitted that the custom duty of Rs.2.59 crores was paid by M/s Kirti Cargo. The involvement of the

officers of the Department was being investigated by the Director General of

Vigilance (â??DGVâ??).

Rejoinder

27. In the rejoinder filed by the Petitioner, it is reiterated that the customs officers alone can access the EDI System and make amendments.

Reference is made to the order dated 9th June, 2016 passed by the Commissioner of Customs whereby the suspension of the license of M/s Kirti

Cargo for alleged misutilization of scripts was revoked. It is contended that the amendment in the license particulars cannot be done by any outsider

since the EDI System is password protected and the user ID and passwords are known to the customs officers alone. Further scripts are entered into

the EDI System only after authorization code is entered by the Superintendent InCharge and is also verified by the Deputy Commissioner/Joint

Commissioner. In other words, the scripts are secured by a two-layer verification under the secret password which was allotted to the Superintendent

and on every 15 days the password is changed.

Grounds of detention

28. In the grounds of detention, the allegation against the Detenue is that he was engaged in utilizing the tampered, fictitious, non-existent

licenses/scripts by hatching a scheme with Mr Vinod Kumar Pathror. He was alleged to have fraudulently entered wrong details in the Customs EDI

System after illegally gaining access to the system. There were three types of fraud alleged to have been committed by the Detenue:

(a) Registering a higher value of the goods or the duty in the EDI System than what is given in the scripts / license / authorization.

(b) Registering a fictitious script / license / authorization which was not issued at all by the DGFT.

(c) Re-registering the same license again and again by slightly altering its number and date.

29. It is alleged that imported goods were cleared by misutilization of fraudulently registered licences/scripts and, therefore, such goods were liable to

be confiscated under Section 111 (o) of the Act. The act of clearing the goods using such licenses amounted to smuggling within the meaning of

Section 2 (39) of the Act. As regards licenses/scripts utilized by the importers of paper and articles, different numbers were given at different times.

The DRI was still investigating this aspect. The grounds of detention further stated that the MM had rejected the Detenueâ??s bail application on

12th December, 2017 but â??there is every possibility of you applying for and being granted bail by the Hon'ble Courts any time now or after

completion of 60 days of custody on 15th January, 2018. Once it is done, I am satisfied that you are likely to continue to indulge in smuggling, as

explained above which you need to be prevented from.â??

Analysis and reasons

30. The Court finds that in the statement of Mr Ramesh Chadha, owner of M/s Kirti Cargo, made on 15th September, 2015 under Section 108 of the

Act, he stated that his firm had 9 G-Card Holders which included the Detenue. However, it is seen that in the order passed by the Commissioner of

Customs (General) on 9th June, 2016 revoking the suspension of the Customs Broker License of M/s Kirti Cargo, reference was made to the

misutilization of three import licenses by Kirti Cargo. These were apparently registered twice - once at the Tuticorin Port and subsequently at the ICD

Tughlakabad. The allegation of the Department was that duty credit had been utilized in excess fraudulently. The said order of the Commissioner of

Customs (General) mentioned that ten custom brokers (â??CBsâ??) associated with Kirti Cargo had been found to have cleared imported

consignments of 27 importers using ab initio null and void licenses. These ten CBs included the Detenue and one Divakar Sharma. However, in the

grounds of detention qua the Detenue, no mention is made of the said Divakar Sharma.

31. In the order dated 9th June 2016 of the Commissioner of Customs (General), the modus operandi of the EDI System is noted as under:

â??55.2In this regard, I observe that ICD TKD Export Commissionerate, New Delhi, the concerned Customs formation, is working under EDI

system. As per procedure of registration of script/ license in EDI system, genuineness of scrip can be ascertained while it is registered in EDI system

and once it has been registered in EDI system and duty has been debited with the said scrip, there may not be any reason to doubt about the

genuineness of the said scrip. I, further find that ICD, TKD Export, New Delhi being an EDI Port, details of registered scripts are available in EDI

system and debit of duty has to be made on the EDI system only, which appear to be verifiable on the system directly. As genuineness of scrip could have been ascertained at the time of registration of script in EDI system I, further, observe that in present case, as per preliminary investigation, done

till now, the said CB has not been found involved in trading of CB license. I, therefore, observe that the omission/contravention, if any, on the part of

CB in such a scenario does not prima facie appear to be grave enough to continue suspension of their CB license.â??

32. The said order further noted that the imports in question were made in the year 2012. Since the matter was more than 3 years old and also

considering that the allegations of not producing original scripts by the CBs to Customs at the time of clearance of import consignment may not be

prime-facie considered such a grave offence, it was concluded that the continuation of suspension was not warranted. The said order of the

Commissioner of Customs (General) refers to the statement made by Mr Ramesh Chadha, proprietor of M/s Kirti Cargo where he spoke of utilization

of the scripts for payment of customs duty in the Bills of Entry filed on behalf of M/s Shyama Corporation. He stated that â??the details were

provided by Mr Divakar Sharma, his G-Card holderâ?. This aspect of the matter does not find mention in the grounds of detention in case of the

Detenue.

33. In view of the above order of the Commissioner of Customs, it becomes clear that it is not a simple case where the Detenue could have just

hacked into the EDI System of Customs and tampered with the details the licenses, as is alleged. Unless the officers of the Customs Department

were themselves involved, which angle is still under investigation, it is difficult to accept that the Detenue was the one who was involved in the racket

of tampering with the licenses. Further, co-accused Mr Vinod Kumar Pathror is still said to be a PO.

Absence of a live link

34. Another aspect in regard to which there is no satisfactory response by the Department is the absence in the detention order issued on 2nd January

2018 of any live link with the alleged tampering of the licenses which was discovered way back on 15th September, 2015. Between 15th September,

2015 and 2nd January 2018, there does not appear to have been any prejudicial activity undertaken by the Detenue which has been referred to in the

grounds of detention.

35. At this juncture, the Court would like to refer to the decision of the Supreme Court in T.A. Abdul Rehman v State of Kerala (1989) 4 SCC 741.

The Supreme Court in that case pointed out as under:

â??10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to

pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of

detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable

under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical

test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay

between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily

examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and

further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.â??

Relevant factors not taken into account

36. There are certain factors that have not been taken into account by the Detaining Authority. The first is about the payment of Rs.2.59 crores, made

by the Detenue under protest in September, 2015 itself. While the Detenue states that the payment was made by him, it is the case of the

Respondents that the payment was made by M/s Kirti Cargo. However, given that the allegations concerning the Detenue are inextricably interwoven

with the acts of M/s Kirti Cargo, this was certainly a relevant factor.

37. The second factor that was relevant was the revocation of the suspension of the Customs Broker License of M/s Kirti Cargo which notes that the

suspension was on account of the payment of duty by M/s Shyama Corporation through the G-Card holder Mr Diwakar Sharma. Therefore, the

concerned G-Card holder in that transaction was not the Detenue. This was also another relevant factor for the Detaining Authority to have

considered while passing the detention order against the Detenue.

38. The third factor which weighs with the Court is that the detention order

proceeds on the basis that the Detenue has been avoiding the summons

issued to him. A reference has already been made to the proceedings before the learned CMM in the complaint CC No.10/2016 filed by the Customs

Department against the Detenue under Sections, 172, 174 and 175 IPC. The numerous adjournments granted to the department in the said

proceedings belie the case of the department that it was the Detenue who was deliberately avoiding appearance before it. When the Department was

unable to produce the documents to show that despite summons the Detenue was not appearing before it, the Department was required to lead

presummoning evidence to establish that fact. The proceedings before the learned ACMM of 26th July, 2016 show that the counsel for the

Department repeatedly sought an adjournment for that purpose. On 17th October, 2017, the Detenue himself moved an application seeking dismissal

of the complaint. That application was dismissed by the learned ACMM after noting that the Detenue had not been summoned in that case as yet.

Therefore, the case of the Respondents that the Detenue was deliberately avoiding summons and, therefore, it became necessary to invoke Section 3

of the COFEPOSA Act to pass a detention order is entirely without basis.

39. Fourthly, a vital document which was not placed before the detaining authority was the SCN dated 20th December, 2017 issued by the DRI which

made a reference to the fact that the licenses for payment of duty was used by the G-Card Holder Mr Diwakar Sharma and not the Detenue. This

vitiated the detention order as explained in the decision of this Court in Sahil Jain v. Union of India (2013) SSC OnLine Del 4540 which in turn

referred to the decision of the Supreme Court in Khurjibhai Dhanjibhai v.

State of Gujarat (1985) 1 SCALE 136.

40. The non-considering of vital facts which have a bearing on whether the Detenue should continue to be detained would vitiate the entire detention

order. Reference may be made to the decision in Ashadevi wife of Gopal Ghermal v. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat (1979)

1 SCC 222 where it was observed as under:

â??If material or vital facts, which would influence the mind of the detaining authority one way or the other on the question whether or not to make

the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal. The detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention and if

taking into account matters extraneous to the scope and purpose of the statute vitiates the subjective satisfaction and renders the detention order

invalid then failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would

equally vitiate t the subjective satisfaction and invalidate the detention order.â??

41. Likewise, in Union of India v. Ranu Bhandari (2008) 17 SCC 348 it was observed that notwithstanding the nature of the allegations made, a

Detenue was entitled to the assurance that at the time when the detention order was passed all the materials, both for and against him, had been

placed for the consideration of the detaining authority and had been considered by it before the detention order was passed, having particular regard to

the orders passed by the Settlement Commission appointed under the provisions of the Customs Act 1962, which absolved the Detenue in that case

from criminal prosecution.

Departmental Circulars not referred to

42. There is merit in the contention that the sponsoring authority erred in not referring to the various circulars issued by the Commissionerate which

demonstrates how the verification of the genuineness of the scripts was to be done. Without the participation of various customs officers, it would

have not been possible to hack the system and tamper with the details concerning the scripts/licenses. There being a two-layer verification process by

means of a secret password allotted to the Superintendent, it would have been impossible for an individual to tamper with or hack into the system. The

exact manner of tampering with the system has not been explained.

43. Further, since the investigation into the role of the Customs officers is still said to be underway, the only conclusion that can be drawn is that there

is no material available with the Detaining Authority to justify the conclusion that the Detenue had the potential of continue to tamper with the

licenses/scripts even in future, after his release. There appears to be no material with the detaining authority to justify such a conclusion. In particular,

the Respondents have not satisfactorily responded to the following averments in the petition:

â??Further the EDI is completely secured system and can only be accessed by the Customs officials since a unique single sign on identity (""SSOID"")

is only issued to Customs officer and a password is required to access the online EDI system and it is not conceivable as to how all the unique SSOID

and passwords of all officers working at ICD, Tughlakabad, from 2011-2015 have been accessed when the password is required to be changed every

15 days / fortnightly.â??

No likelihood of continued violations

44. The alleged propensity of the Detenue to continue to commit any such fraudulent acts is also not convincing in view of the order of the

Commissioner of Customs (Preventive) which acknowledges how difficult it is for any individual to simply hack into the EDI System. Moreover, it is

not disputed that the scripts in question are valid only for a period of 18 months. No details have been given in the grounds of detention as to which of

the scripts will continue to remain valid beyond 2nd January, 2018 which would warrant the continued detention of the Detenue.

45. The Court repeatedly asked the learned counsel for the Respondents to demonstrate before it in what manner the Detenue would, if the detention

order was quashed, be in a position to undertake any of the alleged harmful or prejudicial activities mentioned. The learned counsel for the

Respondents was unable to do so. Since no past antecedents of the Detenue have been pointed in the grounds of detention, there was no material to

support the conclusion that the Detenue possesses the propensity or potentiality to indulge in smuggling activities in the future.

Conclusion

46. For all of the aforementioned reasons, the Court finds no legal justification for the Detaining Authority passing the impugned detention order

against the Detenue.

47. Accordingly, the impugned detention order number F. No. PD/12002/01/2017-COFEPOSA dated 2nd January, 2018 is held to be bad in law and is

hereby quashed. The Memorandum dated 21st March, 2018 issued by the Deputy Secretary, COFEPOSA rejecting the Detenue's representation

dated 24th January, 2018 is also set aside. The Detenue is directed to be released forthwith.

48. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

49. A copy of this judgment be given dasti to the parties under the signatures of the Court Master.

