

(2008) 09 DEL CK 0283

In the Delhi High Court

Case No : Writ Petition (Criminal) 782 of 2008

Pooja Batra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 3, 3(2), 5(1), 7
Constitution of India, 1950 — Article 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 39, 482, 82, 83
Customs Act, 1962 — Section 108, 110, 135, 2(39)
Evidence Act, 1872 — Section 73
Penal Code, 1860 (IPC) — Section 199, 420, 468, 471

Citation : (2008) 155 DLT 6

Hon'ble Judges : Vikramajit Sen, J;V.K. Shali, J

Bench : Division Bench

Advocate : Pradeep Jain and A. Samad, for the Appellant; Satish Aggarwala and Pooja Bhaskar, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Pooja Batra Vs. Union of India (UOI) and Others, AIR 2009 SC 2256 : (2009) CriLJ 2797 : (2009) 166 ECR 149 : (2009) 237 ELT 17 : (2009) 5 JT 194 : (2009) 4 SCALE 653 : (2009) 5 SCC 296 : (2009) 5 SCR 67 : (2009) 4 UJ 1965

V.K. Shali, J.—Ms. Pooja Batra, petitioner has filed the present writ petition for quashing the detention order bearing F. No. 673/06/2007-CUS/VIII dated 5th December, 2007 issued by Joint Secretary (Cofeposa), Ministry of Finance, Department of Revenue against her husband Deepak Kumar @ Deepak Batra S/o Sh. Om Prakash (hereinafter referred as the detenu), R/o 1431, Gopal Street, Sangat Rashan, Paharganj, New Delhi u/s 3 of the Conservation of Foreign Exchange and Preservation of Smuggling Act, 1974. The detenu was detained in pursuance to the said detention order on 22nd May, 2008.

2. Briefly stated the facts of the case as given in the petition are that the detenu purported to have represented himself as a proprietor of a concern styled as M/s Om Prakash Deepak Kumar, 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-110006. He filed a bill of entry bearing No. 589144 dated 25th April, 2007 for clearance of the consignment at I.C.D., Tughlakabad, New Delhi through their clearing agent CHA M/s P.P.Dutta, Wg. Cdr. (Retd.) for the clearance of 1041 cartons containing "Telescopic Channels" of 10", 12", 14", 16" and 18" and "Soft Scrubber" collectively valued at Rs. 3,06,045.51 (Rupees Three Lacs Six Thousand Forty Five and Fifty One Paise). On the aforesaid valuation, a duty amount payable was Rs. 1,04,201/-(Rupees One Lac Four Thousand Two Hundred One). It is alleged that the clearing agent, M/s P.P. Dutta sent a letter to the Deputy Commissioner of Customs, ICD, Tughlakabad, New Delhi wherein it expressed its inability to clear the shipment due to some problem and accordingly issued NOC in favour of the detenu. On 15th June, 2007, the clearing agent along with a covering letter sent original bill of entry invoice, packing list, Bill of lading, Certificate of origin and NOC to the detenu. On receipt of the aforesaid documents, the detenu Deepak Kumar himself appeared before the Customs Authorities, ICD Tughlakabad, New Delhi on 3rd August, 2007 represented himself to be the proprietor of M/s Om Prakash Deepak Kumar and requested for clearance of the aforesaid bill of entry on the ground that the clearing agent was not coming forward to clear the consignment. The statement of the detenu Deepak Kumar was recorded u/s 108 of the Customs Act which he alleges to have been obtained under duress and coercion. Thereafter, the consignment was opened and it was found to contain goods other than the ones which were declared to the tune of value of Rs. 3,06,045.51/- (Rupees Three Lacs Six Thousand Forty Five and Fifty One Paise). Accordingly, his statement was again recorded on 4th August, 2007. In both the statements, the detenu had represented himself as to be the proprietor of M/s Om Prakash Deepak Kumar having its office at 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-06 having IEC Code No. 050602341 dated 25th July, 2006 which was purported to have been issued by the Director General of Foreign Trade, Govt. of India. The detenu had also represented that he had now shifted his business to 1431, Gopal Street, Sangat Rashan, Paharganj, New Delhi. Since it was a case of under valuation and mis-declaration, the detenu was arrested and produced before the learned ACMM, Patiala House Courts, New Delhi on 4th August, 2007 who had remanded him to the judicial custody. The detenu filed a bail application on 6th August, 2007 before the learned ACMM, New Delhi and in the said application, he made a mention that his confession/statement which was purported to have been recorded by the Customs Authority was obtained under duress/coercion. The said application for grant of bail of the detenu was rejected on 14th August, 2007 after obtaining reply from the Customs authorities. On 16th August, 2007, a fresh bail application was filed before the Learned Additional Sessions Judge, New Delhi which was also rejected on 17th August, 2007. On 18th August, 2007, a third application for bail was filed before the High Court which was allowed on 30th August, 2007 on the ground that the detenu

had been in custody for 27 days and he had already paid a customs duty to the tune of Rs. 25,00,000/- (Rupees Twenty Five Lacs) and was prepared to pay the penalty on account of the mis-declared imported goods. Thereafter, a detention order is purported to have been passed on 5th December, 2007 against the detenu which he allegedly learnt only on 22nd May, 2008 and whereafter he immediately surrendered before the ACMM, New Delhi and he is in custody since then. He represented to the Secretary, Govt. of India on 13th June, 2008 through Jail Superintendent which representation was rejected by the Special Secretary, Govt. of India on 1st July, 2008 and communicated to him on 2nd July, 2008 belatedly. Similarly, the Advisory Board also rejected the case of the detenu on 23rd July, 2008 and thereby now he was constrained to file the present petition as averred by him.

3. So far as the respondents are concerned, they have filed their detailed counter affidavit and contested the claim of the petitioner on certain factual aspects apart from legal propositions. The case of the respondent-sponsoring Authority is that on 25th April, 2007 after filing the bill entry No. 589144 dated 25th April, 2007 before the Deputy Commissioner of Customs (Import Shed), Tughlakabad, New Delhi through clearing agent Wg. Cdr., P.P. Dutta, the detenu or his clearing agent did not appear for clearing the goods till 23rd July, 2008. The consignment was declared to contain 1041 cartons containing "Telescopic Channels" of 10", 12", 14", 16" and 18" and "Soft Scrubber" collectively valued at Rs. 3,06,045.51 (Rupees Three Lacs Six Thousand Forty Five and Fifty One Paise) of which a duty amount of Rs. 1,04,201/- (Rupees One Lac Four Thousand Two Hundred and One) was payable. Since the sponsoring authority had intelligence reports that the importer is attempting to get imported goods cleared by mis-declaring the description, quantity and value accordingly, surveillance was kept on the consignment in this regard. Simultaneously Manager (CONCOR) ICD, Tughlakabad, New Delhi was requested, not to clear the aforesaid consignment without the written permission of the Deputy Commissioner of Customs (Import Shed), ICD, Tughlakabad, New Delhi. Till 23rd July, 2008, nobody came forward to get the goods cleared. Since the clearing agent M/s P.P. Datta, Wg. Cdr. (Retd.) had got suspicious about the contents of the consignment on account of the fact that the detenu had approached and stated him that at no cost the consignment should be checked, he withdrew his authority to get the goods cleared and returned the papers to the detenu. On 3rd August, 2007, the detenu appeared before the concerned official in the Import Shed and gave a letter dated 2nd August, 2007 on the letter head of M/s Om Prakash Deepak Kumar requesting the Deputy Commissioner of Customs (Import Shed), ICD Tughlakabad, New Delhi that the aforesaid consignment be cleared. It was also represented that the clearing agent was not coming forward to get the goods cleared and therefore he had to come himself. Since there was an intelligence report regarding the mis- declaration under violation about the quantity and the quality, the Deputy Commissioner had written that the entire 100% of the consignment has to be checked which was done on 3rd August, 2007. Pursuant

to this, on 4th August, 2007 when the detenu had appeared again, his statement u/s 108 of the Customs Act were recorded where he had owned the concern styled as M/s Om Prakash Deepak Kumar and he had also owned the import on the aforesaid consignment, although he had disputed the factum of other eight prior consignments having been got cleared by him. The consignment was found to contain carton boxes/packages numbering 1118 as against 1041 and which were more than what was claimed under the bill of entry No. 589144 dated 25th April, 2007. The consignment was found to contain 441 cartons as containing Telescopic Channels instead of 700 cartons as declared. As against the declared 341 carton boxes containing Soft Scrubber only 54 were found to contain Soft Scrubber. On opening of these carton boxes of identical marking said to contain soft scrubber, it is found that different types of goods were kept concealed in these cartons. It was found that 200 similar carton boxes contained shoes of Adidas, Nike, Air brands and 67 similar carton boxes were found containing cigarettes packets of "Marlboro" brand, 56 white small boxes were found containing ignition plugs of "Mico Bosch" brand and similar 300 cartons were found containing AAAR03 Nishica of brand battery cells. Inquiries by the respondents also revealed that ignition plugs of "Mico Bosch" were found to be spurious and similarly "Marlboro" cigarettes were found to be not containing statutory warning and therefore, it being spurious could also be not ruled out. It was found by the respondents, apart from the declared goods in 495 cartons collectively valued at Rs. 2,03,220/- (Rupees Two Lacs Three Thousand Two Hundred and Twenty) of different types of un-declared goods collectively valued at Rs. 85,04,000/- (Rupees Eighty Five Lacs Four Thousand) contained in 623 cartons were concealed with the declared goods. The duty involved on the said goods contained in 1118 carton boxes and collectively valued at Rs. 87,07,200/- (Rupees Eighty Seven Lacs Seven Thousand and Two Hundred) worked out to be Rs. 30,00,000/- (Rupees Thirty Lacs) approximately. Accordingly, a Panchnama dated 3rd August, 2007 was prepared and goods were confiscated along with their packaging material u/s 110 of the Customs Act, 1962 on the reasonable ground that the same were being smuggled.

4. The premises of the concern M/s Om Prakash Deepak Kumar at the address 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi were searched but nothing offending was recovered. The said premises were found to be in possession of one person Deepak Kumar Aggarwal who claimed himself to be the proprietor of the aforesaid concern as well as of the IEC Code issued by the Director General of Foreign Trade in which his PAN number was given. He further stated in his statement that he never imported any goods from China as was purported to have been done in the present case or in the earlier eight consignments. He further stated that he only deals in dry fruits which he imports from Iran, Afghanistan, Indonesia and USA etc.

5. The detenu was enlarged on bail by the High Court. On 29th October, 2007, sponsoring Authority after completing investigation sponsored the case of the petitioner for passing detention order to the Cofeposa department, which after

examining the matter in detail passed the impugned detention order dated 5th December, 2007. The case of the respondent is that the detention order was passed to prevent the detenu from indulging in smuggling activity on account of the fact that prior to the consignment in question, the detenu had imported eight other consignments wherein he had also imported the goods after clearance of the Customs Authorities. It was the case of the respondents that although the said eight consignments were cleared and nothing offending was detected but this was on account of the fact that only 5 to 10% of the checking was done in respect of the said goods while as in the instant case 100% checking was done which revealed that it was a case of not only mis-declaration with regard to the quality and the quantity and description of the goods but the detenu was indulging in smuggling activity within the definition of Section 2(39) of The Customs Act. The impugned detention order which was served on him on 22nd May, 2008 as the detenu was alleged to be avoiding the service of the order during the interregnum period.

6. We have heard the learned Counsel for the parties and perused the records. Learned Counsel for the detenu has in essence raised five submissions essentially with a view to attack the detention order dated 5.12.2007:

(i) Documents in respect of which enquiry is pending cannot form the basis of subjective satisfaction.

a) The first submission of the learned Counsel for the detenu was that he had admittedly appeared before the Deputy Commissioner of Customs requesting him to clear the consignment under the bill of entry No. 589144 since the clearing agent was not coming forward to clear the said consignment. In respect of the said bill of entry, goods which were sought to be cleared allegedly consisted of Telescopic Channels of 10", 12", 14", 16", and 18" and Soft Scrubber collectively valued at Rs. 3,06,045.51 (Rupees Three Lacs Six Thousand Forty Five and Fifty One Paise) on which duty payable was stated to be Rs. 1,04,201/ (Rupees One Lac Four Thousand Two Hundred and One)-. The aforesaid consignment was allegedly under DRI surveillance and on checking the same it was found to be containing undeclared imported goods, the value of which is stated by the respondents is Rs. 85,04,000/- (Rupees Eighty Five Lacs Four Thousand) on which the duty of Rs. 30,00,000/- (Rupees Thirty Lacs) or so was allegedly livable. The detenu's case was that he has already secured the interest of the revenue inasmuch as he was enlarged on bail by the High Court in respect of alleged offence u/s 135 of the Customs Act on the ground that he has deposited Rs. 25,00,000/- (Rupees Twenty Five Lacs) as customs duty on undeclared goods and further was prepared to pay the penalty. Further so far as the eight other consignments, which are purported to have been allegedly imported earlier by the detenu, they are subject matter of enquiry by the DRI on the request of Commissioner of Customs ICD, Tughlakabad, New Delhi. This enquiry is sought to be made at the port of exports with regard to the details of payment, the value of goods declared at the port of exports etc., and therefore

the respondents had not conclusively established the ownership of these eight consignments qua the detenu and therefore, it could not be form the basis of passing of the detention order. This leaves the department only with one consignment in respect of which the customs duty has already been paid and he will face prosecution u/s 135 of the Customs Act and one incident cannot form the basis of passing the detention order. The learned Counsel for the detenu has placed reliance on case titled Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, . In this particular case, the baggage which was containing the contraband goods, on the basis of which the detention order was passed, was alleged to be belonging to the detenu. In that case, the detenu had disowned the ownership of the said baggage and it was prima facie shown that the baggage was having no tags which would indicate that the baggage was belonging to the detenu in the said case. Further, the petitioner was an Engineering student in that case. It was, under these circumstances that the Supreme Court had observed that keeping in view that there was no past conduct on the part of the detenu of being involved in any anti-social activities except that he had visited the foreign countries once or twice, the baggages containing contraband goods did not belong to the detenu and the investigation was still pending. Therefore it could not be concluded that baggage belonged to the detenu and the passing of the detention order was without any application of mind and on inchoate material.

b) As against this, the documents which are declaration forms and are placed at pages 278 to 293 of the paper book are submitted to the Customs Authorities by the detenu himself duly signed seeking clearance of the goods on eight different occasions. It was purported to be containing the goods described in such declaration forms such as steel wool scrubber & hinges etc. imported from China. It was further contended by Mr. Aggarwala, learned Counsel for the Respondents that although in eight these transactions goods were cleared that does not mean that the consignments in these eight cases were not violating the provisions of the Customs Act, 1962 inasmuch as in these eight transactions only a sample inspection of 5 to 10 % of goods was carried out. While as, in the ninth transaction, the consignment was examined 100% there was information received from the Department of Revenue Intelligence that there is a mis-declaration both with regard to the quality and the quantity of the goods in the said consignment which was found to be correct. The ownership of the consignment either in respect of the earlier eight transactions or the ninth one on the basis of which the detention order was passed was established by preponderance of probabilities to be owned by the detenu. This is reflected from the statements of the clearing agent Mr. Dutta and his nominee recorded u/s 108 of the Customs Act where they have stated that it was Deepak Kumar, the detenu who had come to them since early 2006 and got the goods/consignments cleared which were imported from China. They have also stated that on ninth occasion when the consignment had come, the detenu had very emphatically impressed on them that the consignment ought not to be permitted to be checked by Customs Authorities and at any cost (emphasis added), which clearly

showed his guilty mind. Therefore, merely on account of the fact that letter is purported to have been written by the Customs Authorities to the DRI requesting them to get the further details from the port of exports with regard to the payment, description of goods declared, there would not in any way make the ownership of the goods qua the detenu either in respect of ninth or even the earlier eight consignments as doubtful.

c) Further, if the signatures on these declaration forms are compared in exercise of powers conferred on the Court u/s 73 of The Indian Evidence Act, 1872 with the signatures appearing on the declaration form submitted for the ninth transaction, it will clearly show that both these sets of documents have been signed by the same person only. The detenu went to the Customs Authorities not only for the clearance of the goods but he owned them in a statement recorded u/s 108 of The Customs Act, on 3rd August, 2007 and 4th August, 2007 on which date he was put under arrest.

d) Therefore, the ratio of the judgment relied upon by the petitioner in Chowdarapu Raghunandan v. State of Tamil Nadu case (supra) is not applicable to the facts of the present case as the said judgment is totally distinguishable. Accordingly, we hold that there is no merit in the first contention of the learned Counsel for the detenu that the documents which are forming part of enquiry have been made as the basis of passing of detention order wrongly or that the detention order is passed without any application of mind. On the contrary, the ninth consignment is owned by the detenu while as the other eight are by preponderance of probabilities established to be belonging to him only.

(ii) Non- application of mind in passing Detention Order

a) It was next contended by Sh. Jain, learned Counsel for the detenu that the detention order has been passed by the detaining authority without any application of mind. In order to drive this point home, the learned Counsel drew our attention to the detention order and read out various portions of paras like para 5, 9 & 13 etc. wherein it has been mentioned that the detenu namely Deepak Kumar @ Deepak Batra is the proprietor of M/s Om Prakash Deepak Kumar, 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-6 while as the case of the respondents is that the detenu is not the proprietor of the said concern and therefore there is a total non-application of mind on the part of the detaining authority as on the one hand they are saying that the detenu is the proprietor, on the other hand, they are stating that the IEC Code and PAN number did not belong to him. The said Code was also not issued on his PAN number and he was not the owner of the proprietary concern. Therefore, it is a case of non-application of mind.

b) As against this, Mr. Aggarwala, learned Counsel for the Respondents contended that what has been stated in the detention order are the facts on the basis of which, grounds or the reasons thereof for the detention of the detenu has been passed and therefore, it could be said that there was any non-

application rather a perusal of the detention order shows the application of mind.

c) Admittedly, there is a concern by the name of M/s Om Prakash Deepak Kumar having its office at 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-6 while as detenu's residential address is 1431, Gopal Street, Sangat Rashan, Paharganj, New Delhi. The detenu represented himself as the proprietor of the concern namely M/s Om Prakash Deepak Kumar and claimed himself to be the owner of the ICD number in question and imported the goods from China which were mis-declared with regard to the description as well as the quantity. As against this, enquiries had revealed that it was not the detenu Deepak Kumar alias Deepak Batra, husband of the petitioner who was the proprietor but it was one Deepak Kumar Aggarwal who was the proprietor and in fact the detenu was misusing the name of the said concern to his own benefit without the knowledge of the original proprietor. As a matter of fact, the detenu was indulging in criminal acts by making false declaration before public servants by impersonating and committing offences of cheating forging documents and using forged documents as genuine to claim himself to be the proprietor of the said concern. These facts have been given in ex tenso in the detention order. By no stretch of imagination the reference to the same can be construed to be as the basis for non-application of mind. We don't find any merit in the submission of the learned Counsel for the detenu that the detention order has been passed without any application of mind. On the contrary, we are of the considered opinion that a detention order which is running into almost 21 pages giving each important fact and circumstance as well as the reasons in detail which has prompted the Joint Secretary to Government of India to pass the detention order. The sum and substance which has necessitated passing of the detention order is on account of the fact that there is a proprietary concern by the name of M/s Om Prakash Deepak Kumar having its office at 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-6 while as the detenu admittedly is living at 1431, Gopal Street, Sangat Rashan, Paharganj, New Delhi. The proprietary concern M/s Om Prakash Deepak Kumar actually belongs to one Deepak Kumar Aggarwal who is doing the business of importing dry fruits from Afghanistan, Indonesia, Iran, USA and some other countries which he sells in Khari Baoli and not importing goods from China. He has also admitted that he had never imported any material of hardware like the one which was said to be imported by the ninth transaction for which the bill of entry No. 589144 dated 25th April, 2007 was filed. The said Deepak Kumar Aggarwal has admitted that importer's detail like IEC number and the PAN number which is reflected on the certificate copy of which is placed at page 47 belongs to him, but he has never imported the goods from China.

d) As against this, the detenu was not only misusing the name of the concern and the importer's detail including IEC number and the PAN number but was in fact forging a document by seeking clearance of the ninth consignment on the letter head of M/s Om Prakash Deepak Kumar and presenting the said document as genuine with a view to get the goods cleared from the Customs Authority which was subject matter of mis-declaration with regard to the description of

goods as well as quantity and quality. He was therefore, cheating by impersonating actual Deepak Kumar Aggarwal who was the proprietor. Therefore, it could hardly be said that there is any merit in this submission of the learned Counsel for the detenu that the impugned detention order is passed by the detaining authority without any application of mind. Accordingly, the said submission is dismissed as meritless. So far as the reliance by the learned Counsel for the petitioner on Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, is concerned, it is stated that the ratio of the said judgment has not been followed. The detention order not only contains factual material but also the inference leading to the passing of the detention order.

(iii) Non-placement of retraction before Detaining Authority

a) The third submission made by the detenu for quashing of the detention order is to the effect that the retraction which was made by the detenu to the learned Judicial Magistrate on the date when he was produced before the Court of learned ACMM, New Delhi has not been placed before the detaining authority and therefore, the detention order is not sustainable. The retraction which was alleged to have not been placed before the detaining authority reads as under:

Judge Sahab

Mujhe is case mein jhutha fasaya gaya hai, mere se zabardasti bayaan likhvayein gaye hein aur khali jagah par hastakshar karvayein gaye hein

Sd/-

(Deepak)

b) The learned Counsel has also placed reliance on cases titled as K. Satyanarayan Subudhi Vs. Union of India, and others, & K.S. Nagamuthu Vs. State of Tamil Nadu and Others, in support of his contention.

This argument of the learned Counsel for the detenu was contested by the learned Counsel for the respondents. It was contended by Mr. Aggarwala, learned Counsel for the Respondents that the detenu after being arrested had filed three bail applications, one before the learned ACMM, Patiala House, second before the learned Additional Sessions Judge, Patiala House and the third before the High Court for grant of bail and in all the three applications he had made a reference to his involuntary character of his confession/statement but the retraction to which the learned Counsel for the detenu is making reference now and a copy of which is placed at page 305 was not annexed by the detenu along with any of his applications. On the contrary, along with the application for bail before the High Court the detenu had attached a document which was shown in the index to be a retraction but which was not actually retraction at all. It was further contended that so far as the document, a photocopy of which is placed at page 305 that is a document which is fabricated one. This is the reason why this document was not annexed along with the bail application or supplied to the respondents and could not be placed before the detaining authority.

c) Further, the factum of the retraction having been made by the detenu was contested by the respondents in their reply to all the three applications filed by the detenu. All the bail applications and the reply filed by the respondent-sponsoring authority was placed before the Detaining Authority. This fact is referred to by the detaining authority in paragraph 27 of the detention order, that the retraction is considered and has been found to be totally untrue that the detenu had been forced/coerced to make certain involuntary and incorrect statements u/s 108 of The Customs Act and accordingly the detention order was passed. Therefore this submission of the learned Counsel for the detenu was stated to be without any merit.

d) We have gone through the so called retraction, the detention order as well as the bail applications relied upon by the detenu. At the outset, it is stated that the document which is stated to be retraction purported to have been made by the detenu and a photocopy of which is placed at page 305 of the paper book is a document which prima facie seems to have been manufactured by the detenu. This is on account of the fact that no doubt, in the application for bail, at all the three levels he had made reference to his statement having been made u/s 108 of the Customs Act under coercion or duress but this alleged retraction was not appended along with any of the three applications. The natural conduct of the detenu or his counsel would have been if this document would have been in existence at the first available opportunity of filing the bail application the same would have been appended by the detenu along with the application for grant of bail. Having chosen not to do so, it raises a doubt about the existence and genuineness of the document itself. The doubt about the authenticity and the genuineness of the document gets further compounded by the fact that it does not bear the name of the Court, the title of the case, the date of hearing or even the date on which it was purported to have been given to the learned Judicial Magistrate by the detenu and there is no order passed by the learned Magistrate on the same. Contrary to this, a document purported to be a retraction is attached with the bail application in the High Court which is not actually a retraction. Further, the respondents on learning about the fact of this document, purporting to be a document of retraction only after filing of the present writ petition on 9th June, 2008 make an application to the learned Judicial Magistrate, New Delhi on 23rd July, 2008 to make an enquiry as to how this document has come on to the judicial record without a copy of the same having been supplied to them and without any order of the learned Magistrate or any endorsement of the Court staff. Therefore, all these facts taken cumulatively will make any reasonable, prudent person to arrive at an irresistible conclusion that this document is a forged, fabricated or in any case manufactured afterwards to create evidence. Further, the possibility of this document being manufactured subsequently is further enhanced because of the criminal proclivities of the detenu. This is evident that the detenu forged a letter on the letter head of M/s Om Prakash Deepak Kumar and represented himself to be the proprietor of the concern while as he was not. Therefore, we prima facie feel that the document of

purported to be retraction relied upon by the detenu is nothing but a manufactured document and cannot be given any credence much less the non-placement of the same can be said to be of any consequence qua the detention order having been passed against the detenu.

e) Having said so, even if we assume that the detenu had retracted the contention made by him u/s 108 of the Customs Act at the first possible opportunity that is on 4th August, 2007 when he was arrested and produced before the Judicial Magistrate on the first date, the factum of retraction was placed before the detaining authority by way of placing the applications of bail and the reply thereof filed by the respondents which was duly considered and attended to by the detaining authority as was evident from para 27 of the impugned detention order wherein the detaining authority after examining all these facts has come to the conclusion that though the retraction purported to have been made by the petitioner is not correct and truthful and therefore has not been given any credence.

f) There is another angle to this. If one sees the dictionary meaning of the word "retraction" it is to withdraw, to draw back or to retrace. Meaning thereby the person who is retracting his so called confession or the statement is prima facie admitting tacitly the factum of confession or statement having been made and now wants to wriggle out of the same. If one see the bail applications of the detenu and the so called retraction placed at page 305 of the paper book filed in three forums he only says that the detenu was coerced or forced to make the statement u/s 108 of the Customs Act and it does not talk about retraction by the detenu. We feel that plea of retraction is only an afterthought.

g) The Supreme Court in case titled Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, has held that detention order is not vitiated on the ground of non-application of mind if subjective satisfaction arrived at on the basis of other independent and objective factors enumerated in the grounds warrant the passing of the detention order. In this case also a contention was raised that the retraction of confessional statements made by the detenu was not referred to in the grounds of detention. The present case stands on a much better footing inasmuch as not only reference to the alleged retraction is made in the detention order but it is also observed that this alleged retraction was not voluntary and truthful. Further a reading of the entire detention order running into 21 pages shows not only application of mind for arriving at subjective satisfaction but also the propensity and the potentiality of the detenu to indulge in smuggling activity surreptitiously which has resulted in passing of the detention order.

h) On the similar lines is the judgment of the Supreme Court in Madan Lal Anand Vs. Union of India and others, wherein it has been held by the Supreme Court that if the documents are of such a nature that even in their absence subjective satisfaction would not be affected then failure to place the documents before the detaining authority would be immaterial. Retraction as stated at page 305 is

alleged to have not been placed before the detaining authority, we are of the opinion that failure to do so before the detaining authority would have been immaterial on account of other overwhelming evidence to show that the detenu was indulging in smuggling activities by mis-declaring the goods both with regard to quality and the quantity. But in any case, the factum of retraction has been taken note of in para 27 of the detention order.

i) The judgments which have been relied upon by Sh.Jain, learned Counsel for the detenu are of no help to the detenu. So far as the first authority in case *K. Satyanarayan Subudhi v. Union of India and Ors.* (supra) is concerned the facts of the case were that there was a finding by the Supreme Court that the retraction was going to the root of detention order while arriving at a subjective satisfaction and accordingly the detention order was considered to be invalid. Further the detention order was quashed not on account of this ground but keeping in view another aspect of the matter that the detenu in the said case had already undergo detention for a period of 8 months while as the detention was for a period of one year. In the present case, we have already observed hereinabove that the document of retraction itself is a document whose authenticity and the genuineness itself is in doubt and therefore, cannot be relied upon and yet the factum of retraction having been made by the detenu has been considered by the detaining authority and it has arrived on a subjective satisfaction by observing that the retraction was involuntary and incorrect.

j) We have also gone through the *Naga Muthu's* case (supra). The facts of the said case are also different than the facts of the present case and therefore, the said authority also is not of any help to the detenu. For these reasons the third submission made by the detenu is concerned, that the detention order is bad on account of retraction not having been placed before the detaining authority has no merit.

(iv) Delay in passing the order and disposal of representation

a) The fourth submission which has been made by the learned Counsel for the detenu is consisting of two limbs. The first is that there was a considerable delay in passing the order of detention from the date of alleged incident and in any case, the arrest of the detenu was also delayed by period of five months. Thus, at both the stages, the delay had broken the proximate and live link of permitting the detenu to indulge in smuggling activity and accordingly the detention order ought not to have been passed. The second limb of the submission was that there was a considerable delay in disposal of the representation of the detenu which was violating the rights of the detenu under Article 22(5) of the Constitution and thus the detention order was liable to be struck down. Elaborating this argument further, it was contended by the learned Counsel that the detenu gave a representation dated 13th June 2008, on 16th June, 2008 to the Superintendent Jail, Tihar. The said representation was received in the COFEPOSA department which was in Delhi itself on the 16th June, 2008 itself. The comments were received by the Cofeposa department from the

sponsoring authority on 27th June, 2008 and the representation has been rejected on 30th June, 2008 and intimation to the detenu about the rejection has been sent on 1st July, 2008 and served on the detenu on 2nd July, 2008. Thus there was delay of 16 days in disposal of the representation of the detenu. There was a delay in obtaining the comments from the sponsoring authority and further there was a delay in the disposal of the representation of the detenu also despite the repeated directions given by the Apex Court that the representation of the detenu must be dealt with as expeditiously as possible and in any case it should not brook any delay. The learned Counsel for the petitioner in support of his contentions relied upon the judgments titled as T.A. Abdul Rahaman Vs. State of Kerala and others, and Adishwar Jain Vs. Union of India (UOI) and Another,

b) Mr. Satish Aggarwala, learned Counsel for the Respondents refuted this contention of the detenu that there was any delay either in passing the order or the execution of the same. He also contended that there was no delay in disposal of the representation of the detenu which was received by the office of the answering respondent on 20th June, 2008 and the same was sent to the sponsoring authority for the purpose of obtaining their comments which was received back along with comments on 27th June, 2008. 28th and 29th June, 2008 were holidays of the department being Saturday and Sunday respectively. The representation was considered by the competent authority on 30th June, 2008 and it was rejected on the same date. The communication about the rejection was sent to the detenu on 1st July, 2008 which was delivered to the detenu on 2nd July, 2008. The learned Counsel for the respondents also referred judgments Vinod K. Chawla v. Union of India and Ors. 2006 (3) JCC 1559; Union of India (UOI) and Another Vs. Shrimati Chaya Ghoshal and Another, ; M. Mohammed Sulthan v. The Joint Secretary to Govt. of India, Finance Deptt. and Ors. AIR 1990 SC 2222 and Sheetal Manoj Gore Vs. State of Maharashtra and Others, in support of his submissions.

c) We have considered the submissions made by the respective sides and also seen the record including the averments made by the respective sides in this regard.

d) So far as the question of delay in passing the detention order is concerned, there is no denying of the fact that although the bill of entry bearing No. 589144 dated 25th April, 2007 was submitted by the detenu with the Commissioner of Customs, ICD, Tughlakabad, New Delhi on 25th April, 2007 but nobody had appeared before them to get the goods cleared till 23rd July, 2007. The consignment was under surveillance by the DRI and accordingly the DRI had written a letter to the Commissioner of Customs, ICD, Tughlakabad that they should not clear the said consignment without their knowledge. The detenu himself appeared before the Customs Authorities for the first time on 3rd August, 2007 and represented to them that as his clearing agent was not coming forward to get the consignment cleared because of which he was compelled to appear and request for clearance of the consignment. His statement u/s 108 of the

Customs Act was recorded so as to establish his ownership qua the consignment. His statement was again recorded on 4th August, 2007 and since the consignment was subjected to 100% check and on checking the same it was found on 3rd August, 2007 that there was mis-description of goods both with regard to quantity and quality. Accordingly the detenu was put under arrest on 4th August, 2007 and produced before the learned ACMM, Patiala House, New Delhi. This was the starting point of making an investigation into the matter, with a view to find out as to whether there was potentiality and propensity of the detenu indulging in smuggling activities in the light of the fact that earlier also similar 8 consignments were got cleared by the detenu. These investigations accordingly took some time as the statements of witnesses like the actual owner of the proprietary concern, the statement of the clearing agent and his nominee were to be recorded and it was only on 29th October, 2007 after the enquiry was complete that the sponsoring authority recommended to the COFEPOSA department for consideration of the matter to pass the detention order against the detenu. The respondents in the counter affidavit had given the detailed reasons and steps taken which obviously took time. The relevant para reads as under:

With reference to ground II, it is denied that the Detaining Authority has grossly erred in law in passing the detention order after a long delay which is unexplained in the Grounds of detention. In this connection, it is respectfully submitted that the husband of the petitioner filed Bill of Entry No. 589144 dated 25.4.2007 as importer M/s. Om Prakash Deepak Kumar through their CHA. From 25.4.2007 till 21.7.2007 neither the CHA nor the importer or his representative came forward for clearance of the goods. On 21.7.2007, a letter was sent by the Customs to Manager, CONCOR, ICD, TKD, New Delhi not to clear the container without the written permission of Dy. Commissioner of Customs. On 3.8.2007, the detenu appeared in the import shed for clearance of the goods. The goods were examined on 100% basis and a panchnama dated 3.8.2007 was drawn. On the same day summons were issued to the husband of the petitioner and his statement u/s 108 of the Customs Act, 1962 was recorded. The residential premises of the husband of the petitioner was searched on 4.8.2007 and another statement dated 4.8.2007 was recorded u/s 108 of the Customs Act, 1962. The husband of the petitioner was placed under arrest on 4.8.2007 and his remand to judicial custody was extended from time to time by the Ld. ACMM, New Delhi till 20.8.2007. His bail application before the Ld. ACMM, New Delhi and the Ld. ASJ, New Delhi were dismissed vide order dated 14.8.2007 and 17.8.2007 respectively. He was ordered to be released on bail by the Hon'ble High Court of Delhi, New Delhi on 30.8.2007. In the meanwhile, the address given in the Bill of Entry was searched by the Customs officers on 4.8.2007 in the presence of one Shri Deepak Kumar Agarwal who was found in possession of the said address. The statements of Shri Deepak Kumar Agarwal were recorded on 4.8.2007 and 7.8.2007. The statement of the employee of the CHA, search of the residential premises of the employees and the office premises of the CHA firm and

statement of proprietor of the CHA firm were conducted/recorded between 7.8.2007 to 16.8.2007. The verification about the originality of MICO BOSCH spark plugs under seizure was got done through representative of the Company on 20.8.2007. On 9.9.2007, the proprietor of the CHA firm submitted photocopies of eight Bills of Entry in respect of the goods cleared between 28.8.2006 to 9.1.2007. Further statements of the husband of the petitioner was recorded on 17.9.2007 u/s 108 of the Customs Act, 1962. Second statement of Shri Naveen Kumar Singh, the employee of the CHA firm was recorded on 24.9.2007. The proposal for preventive detention of Shri Deepak Kumar @ Deepak Batra, the husband of the petitioner was sent by the Sponsoring Authority to the Ministry of Finance, Department of Revenue, New Delhi on 29.10.2007 and the same was considered and approved by the Central Screening Committee on 7.11.2007. The proposal as approved by the Central Screening Committee was put up by the Under Secretary (Cofeposa) to the Joint Secretary (Cofeposa) on 16.11.2007. The Joint Secretary (COFEPOSA) after going through the proposal ordered on 23.11.2007 that the proposal may be processed for issue of the detention order against Shri Deepak Kumar @ Deepak Batra. A letter was sent to the Sponsoring Authority on 28.11.2007 seeking certain clarifications on the proposal. The Investigating Officer called on J.S. (Cofeposa) and briefed her about the proposal on 30.11.2007. The clarifications sought by the Ministry of Finance were furnished by the Sponsoring Authority on 4.12.2007. Draft Grounds of detention were prepared and put up to the Joint Secretary (Cofeposa) on 4.12.2007. The Joint Secretary (Cofeposa) approved the Grounds of detention with necessary amendments and the detention order was issued on 5.12.2007. In view of the above facts, it may be stated that there was no delay in passing the detention order against the husband of the petitioner.

(e) In the rejoinder there is only refutation of this and that too only up to 29th October, 2007. The steps taken by the respondent after 29th October, 2007 have not been denied. In our considered opinion, the very fact that the proposal for passing of the detention order was sent on 29th October, 2007 and the detention order was passed on 5th December, 2007, in our view was not suffering from delay so as to snap the link between the incident and the alleged potentiality of the detenu in indulging in smuggling activity. Rather in the detention order it has been clearly mentioned that at the time when the detention order was passed, the detenu was in custody and there was every possibility that if he was enlarged on bail whereupon he may again indulge in smuggling activities which necessitated the passing of the detention order. Therefore, so far as the delay in passing the detention order is concerned, we are of the considered opinion that there is no delay which can vitiate the detention order.

f) With regard to the delay in execution of the detention order, this plea has been taken by the detenu that he was attending the Court and he was available in Delhi yet the detention order was not served on him and therefore, the delay in execution of the detention order also became fatal. This ground though taken during the course of arguments but has not been averred in the writ.

(g) We are of the view that even this plea raised by the detenu does not have any merit, it is totally wrong to assume as has been stated by the detenu that he was appearing in the Court. As a matter of fact, the complaint case u/s 135 of the Customs Act against the detenu is yet to be filed as stated by Mr. Aggarwala. No order sheet of the said complaint case has been placed on record by the detenu and therefore, there is hardly any occasion for the detenu to appear in the Court. Further, in the counter affidavit it has been stated that the detenu's premises were raided twice but without any success. The respondents had to take the coercive steps u/s 7(1)(b) of the Cofeposa Act as well as u/s 82 and 83 Cr.P.C. for declaring him as a proclaimed offender. As against this, the detenu has presented himself as if he is a very straight forward and Law abiding citizen by contending that the moment he learnt about the detention order he surrendered before ACMM, New Delhi on 22nd May, 2008. The averments or the submission by the learned Counsel for the detenu do not inspire any confidence rather we feel that the detenu was evading the service of detention order and making himself scarce despite best effort of the respondents. The ratio of Vinod Kumar's case (supra) squarely fits in the present case. In Vinod Kumar's case it has been held by the Supreme Court that if the detenu is evading service by making himself scarce, it will not be open to content that there was a delay in execution of the detention order.

h) This is totally a false plea raised by the detenu that he was attending the Court or he was available in Delhi yet the detention order was not executed on him. The detenu cannot be permitted to take advantage of his own wrong firstly by evading the service of detention order and then taking the point that there was a delay in execution of the detention order. The respondents had taken all steps expected of him in these circumstances, with a view to procure his attendance. Accordingly, this limb of the argument of the detenu has no merit.

i) So far as the question of delay in the disposal of representation is concerned. No doubt the Courts have frowned on the delay in disposal of the representation of the detenu but as to whether there was a delay in the representation of the detenu in a given case depends on the facts of that particular case itself. In the instant case, the detenu has taken the plea that he made a representation to the Secretary, Government of India as was suggested in the detention order on 13th June, 2008 and which was shown to have been received by the Superintendent Jail itself on 16th June, 2008. On the same day itself, the representation is purported to have been sent by the Jail Superintendent to the Cofeposa department and the detenu also produced a letter purported to have been issued by the Assistant Superintendent of the Jail No. 3 where the detenu is detained. To support his contention that the representation was sent to COFEPOSA department on 16th June, 2008 itself, it was also stated that the jail and the Cofeposa department both happened to be in Delhi and the representation was delivered through special messenger yet it took the respondents more than ten days in obtaining the comments from the sponsoring authority and get the same disposed of which is fatal and accordingly the detention order deserves to be

quashed.

j) We don't agree with the submission of the learned Counsel for the detenu. No doubt the representation of the detenu is dated 16th June, 2008 and is purported to have been delivered to the Assistant Superintendent Jail, Tihar on the same day itself but the respondents have made a specific averment in their counter affidavit that the representation was received by them on 20th June, 2008. This averment made by the respondents in the counter affidavit has not been refuted by the detenu in his rejoinder. Therefore, it is prima facie established that the representation dated 16th June, 2008 was received by the COFEPOSA department only on 20th June, 2008. On the same day itself, it was sent to the sponsoring authority that is the Customs Authority who sent their comments on 27th June, 2008. Obviously when the comments have been sent for, the file has to be processed and comments obtained from different tiers, different officers of the Government, accordingly, the needful was done and the comments on the said representation were sent to the COFEPOSA department on 27th June, 2008. 28th and 29th June, 2008 were holidays being Saturday and Sunday and on the next date i.e. 30th June, 2008, the representation of the detenu was considered by the competent officer of the Cofeposa department and same was rejected. The rejection was communicated to the detenu on 1st July, 2008 and received by him on 2nd July, 2008.

k) We do not feel that there was any delay as is sought to be projected by the detenu in the consideration of his representation. The authorities which have been relied upon by the detenu are not applicable to the facts of the present case. So far as the case of Rajammal Vs. State of Tamil Nadu and Another, is concerned, it was in the facts of the said case, the detention order has been vitiated that there was five days in considering and disposing of the detenu's representation on account of the absence of a minister at the headquarter. The absence of the minister at the headquarter which was held to be insufficient ground justifying the delay which impinges on the personal liberty of the detenu. On the contrary, the facts of the case show that on 20th June, 2008 when the representation itself was received by the COFEPOSA Department, a special messenger was deputed for sending the representation to the sponsoring authority to obtain the comments. The comments were received on 27th June, 2008 that would mean that the sponsoring authority, at best got five days in giving the comments representation of the detenu, was received by the respondents on 27th June, 2008. 28th and 29th June, 2008 were holidays being Saturday and Sunday, the representation of the detenu was accordingly considered by the competent authority on 30th June and rejected. In the instant case there is no allegation that the representation of the detenu was not dealt with because of the absence of any officer. When a representation is received by the sponsoring authority, the department is bound to take some bear minimum time on processing the matter. We do not feel that there was any delay much more than the bare minimum time required to obtain the comments of the sponsoring authority and deal with the same which was in violation of the right of

the detenu granting under Article 22(5) which clearly lays down that the representation of the detenu has to be decided as soon as may be permissible under law. Therefore, this authority does not help the detenu in any manner.

l) In Solomon Castro Vs. State of Kerala and Others, there was a delay of nearly 19 days in receiving the comments from the sponsoring authority and the rejection of the representation, while as in our case it could hardly be said that there was any delay in obtaining the comments of the sponsoring authority except that the bear minimum time spent in gathering information since incriminating evidence was found against the detenu accordingly his representation was rejected on 30th June, 2008 and intimation in this regard was sent to the detenu on 1st July, 2008 and received by him on 2nd July, 2008.

m) Learned Counsel for the respondents has drawn our attention in case M. Mohammed Sulthan v. The Joint Secretary to Govt. of India AIR 1990 SC 2222 it has been held by the Supreme Court that the time taken in obtaining the comments of the sponsoring authority has to be excluded from the number of days in which the representation of the detenu is decided sometime is bound to be taken by the sponsoring authority in giving the comments. If, in terms of the judgment of the Supreme Court, the time taken by the sponsoring authority is excluded, then there is hardly any delay in the instant case inasmuch as the comments from the sponsoring authority have been received on 27th June, 2008 and 28th & 29th June, 2008 were holidays on account of being Saturday and Sunday and the representation was considered and rejected by the competent authority on 30th June, 2008 and the communication of rejection was sent to the detenu on 1st July, 2008 and received by him on 2nd July, 2008. Accordingly this plea of the detenu also does not have any merit so far as the challenge to the detention order is concerned.

(v) Representation addressed to one Officer decided by Another

a) The last point which has been urged by the detenu is to the effect that the detenu in terms of the directions made in the detention order dated 5th December, 2007 had addressed his representation to the Secretary, Government of India, Department of Revenue while as the said representation was considered by the Special Secretary, Government of India, Department of Revenue who was not the competent authority to consider the representation by the detenu in terms of Article 22(5). Learned Counsel for the detenu had also placed reliance in this regard on case titled Union of India and Others Vs. Diljeet Singh and Another, wherein the detention order was quashed on account of the fact that the representation of the detenu was considered by the authority who was not competent to consider the same. Relevant para 9 of the aforesaid judgment reads as under:

9. It is brought to our notice that on April 22, 1998, the Finance Minister has issued statutory notification under Rule 3 of the Business Rules in supersession of all previous orders on the subject under which the Secretary in the

Department of the Revenue, Ministry of Finance, is delegated the power to dispose of representations u/s 11 and the Secretary, Cofeposa in the Ministry of Finance (Department of Revenue), have power to deal with the matter under Sub-section (2) of Section 3, Section 5, Sub-section (1) of Section 7 of the Cofeposa Act. Inasmuch as the impugned order of detention was passed earlier to notification of 1998, it is of no consequence in this case.

b) As against this, the learned Counsel for the respondents has produced before us a notification dated 22nd April, 1998 issued by the Finance Ministry in order to urge that the said notification was not a gazette notification therefore, the subsequent notification dated 2nd September, 1998 by virtue of which power was given to the Special Secretary cannot be said to be bad.

c) The representation of the detenu was considered by the Special Secretary, Revenue in terms of the latest notification and therefore we are of the opinion that he was a competent person to hear and dispose of the representation of the detenu. There was no merit in the plea of the detenu that since the notification issued by the Finance Ministry was a gazette notification and empower the Secretary, Department of Revenue, Ministry of Finance to decide the representation of the detenu which was sought to be changed by another office order dated 2nd September, 1998 and the said power was conferred on Special Secretary who considered the representation of the detenu. Therefore, there was no infirmity in the rejection of the representation of the detenu. In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that there is no merit in the submission made by the learned Counsel for the detenu that the detention order which has been passed against the detenu is vitiated on account of violation of the right of the detenu under Article 22(5) or on account of various submissions which have been made hereinbefore and have been rejected.

7. No other point has been urged by Mr. Pradeep Jain, the learned Counsel for the detenu. In view of the aforesaid facts and circumstances and the discussion, we uphold the validity of the detention order dated 5th December, 2007 and the petition is liable to be dismissed as being without merit.

8. However, before parting, we are constrained to observe that this was a fit case where Commissioner of Customs, ICD, Tughlakabad, New Delhi ought to have made a report with the police at police station Tughlakabad area against the detenu for the alleged offences under Sections 199, 420, 468 and 471 of the IPC on account of the fact that the detenu of his own statement recorded on 3rd and 4th August, 2007 u/s 108 of the Customs Act had admitted that he was neither the owner of the proprietary concern M/s Om Prakash Deepak Kumar yet he in his own hand writing, printed or manufactured the letter head of the said concern claiming himself to be the proprietor of M/s Om Prakash Deepak Kumar having its office at 1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-110006 and sought clearance of the goods by using the said document as genuine from the Customs Authorities. Deepak Kumar Aggarwal the actual

proprietor has also got his statement recorded wherein he stated that it was his IEC code and PAN number which were misused by the detenu in the instant case. As a matter of fact the detenu was impersonating and cheating the Customs Authorities. The statement of clearing agent and his nominee also support this fact. It was on the basis of these documents that the detenu had mis-declared his goods both with regard to quality, quantity and the description which on 100% checking were found to be resulting in evasion of duty to the tune of lakhs of rupees. Further, though the detenu had denied that he had never imported or got cleared eight consignments received earlier the ICD yet there is prima facie evidence placed on record by the respondents to show that it was the detenu who had filed the declaration forms and got those goods also cleared on the basis of this false fictitious representation of being proprietary of concern with somebody else's IEC Code and PAN number. This tantamounts to prima facie commission of various criminal offences. We can certainly not close our eyes to these acts of omission and commission on the part of the detenu which prima facie is in our opinion resulting commission of various offences under Sections 199, 420, 468 and 471 Indian Penal Code by the detenu.

9. Section 39 of the Cr.P.C. casts a duty on the members of the general public to inform the police about the commission of certain specified offences or the intention thereof. This duty is all the more onerous on the Courts and especially the High Court which must do the complete justice u/s 482 Cr.P.C. not only to the petitioner but also against the Respondents/victim which in a case of this nature would be the society at large. It is also under a duty to pass orders to secure the ends of justice.

10. The scourge of smuggling affects the economic health of the country and therefore, cannot be taken lightly. For these reasons we feel that we will be failing in our duty in case we don't direct in exercise of our powers u/s 482 Cr.P.C. the Commissioner of Customs, ICD, Tughlakabad to lodge a report with the police station Tughlakabad, where the goods have been received or sought to be cleared within a period of 15 days along with complete set of relevant documents so as to enable them to register a case under various provisions of IPC as stated hereinabove and/or any other and then proceed ahead in the matter in accordance with law so that it acts as a deterrent not only to the delinquent but also to the persons with similar proclivities. Needless to say that once the report is lodged with the local police they will deal with the same in accordance with law without being influenced in any manner whatsoever by any of our observations recorded hereinbefore. With these observations, we dismiss the present writ petition. Copy of this order be sent to the Commissioner of Customs, ICD Tuglakbad for compliance within a period of one month from today with direction to file a report with the Registrar General of this Court.

11. A cost of Rs. 50,000/- is imposed and the same be paid with the sponsoring authority within four weeks failing which it shall open to them to recover the same in accordance with law.