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(2020) 08 DEL CK 0149

In the Delhi High Court

Case No : Civil Writ Petition No. 4566 Of 2020

Pushpak Lakhani — APPELLANT

Vs

Commissioner Of Customs (Preventive) & Anr — RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:
Customs Act, 1962 — Section 110A, 123

Citation : (2020) 08 DEL CK 0149

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;Prateek Jalan, J

Bench : Division Bench

Advocate : Tarun Gulati, Sumit K. Batra, Manish Khurana, Harpreet Singh, Satish Aggarwala, Gagan Vaswani, Vineet Sharma

Final Decision : Disposed Of

Judgement

D.N. Patel, CJ

Proceedings in the matter have been conducted through video conferencing.

W.P.(C) 4566/2020

1. This writ petition has been preferred with the following prayers:-

"(i) Issue a writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the Respondents to forthwith release the goods seized vide Panchnama dated 29.10.2012 from the premises of the Petitioner and Ms. Shikha Pahwa, provisionally; and/or

(ii) Issue a writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the Respondents to forthwith release all the goods seized vide Panchnama dated 29.10.2012 by accepting and acknowledging the balance deposit of Rs.24,68,913/- in terms of the letter dated 24.03.2014 and the show cause notice dated 24.09.2014, both issued by the Respondent No.1;

(iii) to pass such other order or orders as may be deemed fit and proper in the

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interest of justice."

2. Counsel appearing for the petitioner submitted that it would suffice for the disposal of the writ petition if a suitable direction is given to the respondents to provisionally release the goods which are detained by the respondent No.1.

3. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that high end wrist watches have been seized and lying with the respondent No.2/DRI since 29th October, 2012.

4. Respondent No.1 had issued a show-cause notice dated 28.10.2013, which is at Annexure P-9 to the memo of this writ petition. However, the show-cause notice was not adjudicated upon by the respondents for several months.

5. Learned Senior Counsel appearing for the petitioner has submitted that they are ready and willing to deposit the duty under protest. As per the show-cause notice issued by the respondent No.1, the duty amount mentioned is Rs.52,19,582/-. Out of this amount, Rs.27,50,669/- has already been deposited by the petitioner during the course of investigation.

6. Thus, petitioner has shown the readiness and willingness to deposit the remaining amount of Rs.24,68,913/- for the provisional release of the high end wrist watches, without prejudice to his rights and contentions in the adjudication process of the show-cause notice.

7. Learned Senior Counsel appearing for the petitioner submitted that along with high end wrist watches, gold ornaments i.e. stridhan/personal jewellery has also been seized by the respondent No.2. Similarly, cash of Rs.59 lakhs has also been seized by the respondent No.2. All these items may be provisionally released, subject to payment of the duty as stated hereinabove, which are now in custody of respondent No.1.

8. Learned Senior Counsel appearing for the petitioner has further submitted that several orders have been passed in favour of other parties, including by the Hon'ble Supreme Court, for release of the high end wrist watches. Learned Senior Counsel appearing for the petitioner submitted that in the case of Pankaj Lakhani, an order was passed for release of the wrist watches which is at 'Annexure P-3 (colly)'. Another such order is annexed at 'Annexure P-18' to the memo of this writ petition for Johnson & Johnson. The wrist watches released by the respondent No.1 are 3356 in number. Learned Senior Counsel appearing for the petitioner has further submitted that one more order for the release of high end wrist watches has been passed in the case of Purushottam Jajodia which is at 'Annexure P-16'.

9. Thus, it is submitted by the counsel for the petitioner that irrespective of the fact that whether the goods are notified or not under section 123 of the Customs Act, 1962, consistently the respondent No.1 is high end wrist watches as stated hereinabove, and that the case of the petitioner is in no circumstance different from the cases of Johnson & Johnson, Pankaj Lakhani and the case of

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Purushottam Jajodia.

10. Learned Sr. Standing Counsel appearing for respondent No.1 submitted that a fresh application be moved by the petitioner for provisional release of the goods stating that the petitioner is willing to deposit the balance amount of the duty demanded, and the same would be decided by the respondent authorities.

11. Looking to the above submission and the readiness shown by the petitioner to make the payment of remaining duty as stated hereinabove, and also looking to the orders which are at Annexure P-3, P-16 and P-18, and also keeping in mind the judgment and order dated 01.06.2020 passed by the Division Bench of this Court in CUSAA 229/2019, we hereby direct the respondent No.1 to decide the application for the provisional release of the goods, in accordance with law. The petitioner shall prefer application for provisional release of goods within a period of one week from today. The respondent No.1 shall decide the provisional release application preferred by the petitioner under Section 110-A of the Customs Act, 1962 within a period of two weeks from the date of the receipt of the provisional release application from the petitioner.

12. With these observations, this writ petition is hereby disposed of.

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