

\$~8

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

%

Judgment delivered on: 08.12.2016

+ W.P.(C) 1492/2016

JATINDER KUMAR SACHDEVA

..... Petitioner

versus

THE UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rishabh Kapoor with Mr. Saurabh Kapoor and Mr. Mayank Jain, Advocates.

For the Respondents : Mr. Vivekanand Mishra, Advocate for respondent No.1.

Mr. Sanjeev Narula with Mr. Abhishek Ghai, Advocates for respondent Nos.2 to 4.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

08.12.2016

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks a mandamus, thereby, directing the respondents to unconditionally release the gold *kara* (bracelet) seized/detained by Detention Memo dated 11.02.2015.

2. It is contended that on 11.02.2015, the petitioner arrived from Dubai at IGI Airport Terminal T-3. The petitioner was intercepted by the Custom Officers at the exit gate before crossing the green channel and was

questioned for detainable goods being in his possession. It is contended that the gold *kara* (bracelet), owned by the petitioner, was seized on the ground that gold *kara* (bracelet) is imported from Dubai. Detention Memo dated 11.02.2015 (Annexure P – 2) was issued.

3. It is the case of the petitioner that the petitioner sought release of the gold *kara* (bracelet) alongwith supporting documents to show that the said gold *kara* (bracelet) was his ancestral jewellery and was owned by him even before leaving for Dubai. The representation of the petitioner was not accepted and the gold *kara* (bracelet) was not released and has, till date, not been released.

4. Petitioner relies on Section 110(2) of the Customs Act, 1962 (hereinafter referred to as ‘the Act’) for release of the gold *kara* (bracelet). It is contended that since the Custom Authorities have not issued any show cause notice under Section 124(a) of the Act for seizure of the gold *kara* (bracelet), the gold *kara* (bracelet) is liable to be released.

5. Reliance is placed on the decision of the Division Bench of this Court in **Mohd. Salman Khan vs. Union of India** : 2016 (337) ELT 513 (Del).

6. Notice in the petition was issued on 31.03.2016 and the respondents were permitted to file a counter affidavit. No counter affidavit has been filed by the respondents.

7. It is contended by counsel for the Respondents that the gold *kara* (bracelet) of the petitioner has not been seized but has merely been detained. It is submitted that the detention was on account of the fact that

the gold *kara* (bracelet) was needed to be appraised/cleared as per Rules. The Detention Receipt dated 11.02.2015 is relied upon, which in paragraph 7(a) thereof indicates the reasons for detention i.e. “appraisement and clearance as per Rules”.

8. Learned counsel for the respondents contends that since the gold *kara* (bracelet) of the petitioner has not been seized, section 110(2) of the Act has no applicability. He submits that the said section applies only in case of seizure of the goods and not in case of detention.

9. It is further contended that the petitioner was to present himself for the purposes of appraisal and clearance of the gold *kara* (bracelet). Since the petitioner did not present himself, the gold *kara* (bracelet) could not be appraised and, accordingly, cleared. It is the contention of the respondents that since the petitioner did not cooperate with the respondents, the gold *kara* (bracelet) cannot be released. It is only on appraisal of the gold *kara* (bracelet) that the authorities would be in a position to take a decision whether to seize the goods or not and it is only thereafter that the limitation, as prescribed by sub-Section 2 of Section 110 of the Customs Act, would be triggered. Since the petitioner has not presented himself for appraisal, the seizure has not taken place and, accordingly, there is no question of issuance of any notice under Section 124(a) of the Act.

10. Section 110(2) of the Customs Act, 1962 reads as under:-

"110. Seizure of goods, documents and things.—

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the

goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

11. Reading of Section 110(2) clearly shows that where any goods have been seized under Sub-Section (1) and no notice thereof is given under Clause (a) of Section 124 within six months of the seizure, the goods are liable to be returned to the person from whose possession they were seized. Proviso to Section 110(2) stipulates that the said period of six months, may on sufficient cause, be extended by the Principal Commissioner or Commissioner of Customs for a further period not exceeding six months.

12. In terms of Section 110(2) read with Proviso, the maximum period for which the goods can remain seized without issuance of a notice under Section 124(a) is one year.

13. In the present case, the goods were detained on 11.02.2015 and, till date, no notice under 124(a) of the Act has admittedly been issued.

14. Coming to the contention of the learned counsel for the respondents that the goods have not been seized but have only been detained, the judgment in the case of **Mohd. Salman Khan** (*supra*) squarely covers the issue. The Division Bench in the said case has held as under:-

“9. Whatever may be the justification that the Customs Department wishes to put forth for seizing the goods, there is a definite time-limit within which the Department has to

determine if the seized goods are to be confiscated and if so, for giving a SCN under Section 124(a) of the Act. There appears to be no provision for 'detention' of goods instead of their 'seizure'. Therefore, where a customs officer is satisfied that the person found with the goods is not able to produce the necessary documents to justify being in possession thereof, the Customs officer has to form an opinion under Section 110(1) of the Act as to whether the said goods are liable to be confiscated and if so, to give a SCN under Section 124(a) of the Act. Section 100(2) makes it clear that the maximum time-limit for giving a SCN is six months from the date of seizure and this period is extendable by another six months provided sufficient cause is made out to the satisfaction of the Principal Commissioner or Commissioner (Customs). The procedure for dealing with confiscation of goods and for their release has been provided in the Act itself. Section 110A also talks of provisional release of the goods that have been seized.

10. The upshot of the above discussion is that the Customs Department cannot take shelter under the device of 'detention' of goods in order to avoid the consequences flowing from the 'seizure' of goods. In other words, if the Customs Department is unable to give a SCN under Section 124(a) of the Act within six months (plus another six months where a specific order to that effect has been passed) then in terms of Section 110(2) of the Act, the said goods have to be released to the person from whom they were seized.

11. In the present case, there appears to be no legal justification for the Customs Department not 'seizing' the Nepalese currency recovered from the Petitioner in the first place and secondly, in not giving a SCN within six months of such seizure. In the absence of any provision in the Act that permits 'detention' of such goods, the Court has to proceed on the basis that what was effected on 17th June, 2014 was a 'seizure' of Nepalese currency from the petitioner. That the seized currency was in the possession of the Petitioner and seized from him is also not in dispute.

12. *If that is the position, then under Section 110(2) of the Act a SCN had to be given under Section 124(a) of the Act within six months of 17th June, 2014. With no such SCN having been given, the inevitable consequence, therefore, is that as mandated by Section 110(2) of the Act, the seized goods “shall be returned to the person from whose possession it was seized.”*

8. It is clear that there is a definite time limit within which the Department has to determine if the seized goods are to be confiscated or not. If the Department decides to confiscate the goods, a show cause notice under Section 124(a) of the Act has to be issued. The Division Bench in **Mohd. Salman Khan** (*supra*) has held that there appears to be a no provision for detention of goods instead of their seizure. The Custom Department cannot take shelter under the device of detention of goods in order to avoid the consequences flowing from seizure of goods. In case, the Custom Department, for any reason whatsoever, is not able to give a show cause notice under Section 124(a) within six months or within the extended period of further six months, then, in terms of Section 110(2) of the Act, the goods have to be released to the person from whom they have been seized.

9. In the present case, the seizure of the goods, as noted above, took place on 11.02.2015. For nearly one year and ten months, no show cause notice under section 124(a) of the Act has admittedly been issued. Since no show cause notice has been given, the consequences, as is the mandate of Section 110(2) of the Act, have to follow.

10. Consequently, the gold *kara* (bracelet), seized from the petitioner

and detained by the respondents, is liable to be returned to the petitioner.

11. In view of the above, the writ petition is allowed. The respondents are directed to unconditionally release the gold *kara* (bracelet), seized by the respondents under the Detention Receipt dated 11.02.2015, to the petitioner within two weeks from today, on the petitioner presenting a certified copy of this order before the Superintendent of the Warehouse where the gold *kara* (bracelet) is stored.

12. It is, however, clarified that the release of the gold *kara* (bracelet) would not debar the respondents from taking appropriate action in accordance with law.

13. *Dasti* under the signatures of the Court Master.

DECEMBER 08, 2016
st

SANJEEV SACHDEVA, J