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

\+ **CUSAA 113/2022 & CM APPL. 36319/2022**

THE COMMISSIONER OF CUSTOMS ..... Appellant

Through: Mr. Satish Kumar, Sr. SC with Mr. Dhruv, Mr. Atri Mandal, Advs.

versus

RAHUL CHAUHAN ..... Respondent

Through: Mr. Shadab Azhar, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **14.02.2023**

1. The Commissioner of Customs has preferred the present appeal against an order dated 15.06.2022 (Final order no. A/50589/2022/-SMIBRI), passed by the Central Excise Service Tax Appellate Tribunal ("**CESTAT**"), in Customs Appeal No. 51896/2021/SM. In terms of the said impugned order, the learned Tribunal has allowed the appeal of the respondent and has directed the Commissioner of Customs to return the goods in question and permit their export.

2. The goods in question are described as "Dagger with Jade Hilt and iron dagger with Soap stone Hilt and iron blade and Tabiz/amulet made of jade, inscribed with Quranic verses on one side". The principal dispute is whether the said goods are antiquities.

3. The learned Tribunal had found that in an earlier round the learned Tribunal had allowed the respondent's appeal (by Final order no. C/A/51815/2019-CU[DB] dated 11.12.2019), and directed the Adjudicating Authority to re-test the goods from a "recognised Gem & Jeweller laboratory". The same was not done and, therefore, the learned Tribunal had allowed the appeal

by the impugned order.

4. The appellant has projected the following question for consideration before this Court:

> *"a) Whether the learned tribunal has fell into error in allowing return of the goods to appellant or allowing export of the goods, in contravention of the report of the Statutory Authority Constituted under Section 24 of the Antiquities and Art Treasures Act 1972, holding the goods to be Antiquities, especially when the decision of DG or his officer authorized by him of ASI, which is final?*
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> *b) any other question with the leave of the Hon'ble Court."*

5. The appellant submits that apart from the Director General, Archaeological Survey of India or his nominee not below the rank of Director, no other person can examine whether the goods in question are antiquities or not. Although the Director General's initial opinion was that some of the items comprising the goods are antiquities but the independent laboratories have found to the contrary.

6. In the circumstances, we consider it apposite to issue notice to the Director General, Archaeological Survey of India for assistance of this Court. The Director General, Archaeological Survey of India or his nominee, who is well versed with the facts of this case, is requested to be present in Court on the next date of hearing for this Court's assistance.

7. The appellant shall communicate this order to the Director General, Archaeological Survey of India.

8. List on 21.03.2023.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 14, 2023/*"SS"*