

ITEM NO.61

COURT NO.5

SECTION III

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14378/2008

(From the judgment and order dated 18/09/2007 in WPC No. 5677/2007
of The HIGH COURT OF DELHI AT NEW DELHI)

COMMISSIONER OF CUSTOMS,NEW DELHI & ANR.

Petitioner(s)

VERSUS

M/S EUROASIA GLOBAL,NEW DELHI

Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim relief)

Date: 23/03/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. K. Radhakrishnan, Sr.adv.
Ms. Binu Tamta, Adv.
Mr. B.V. Balaram Das,Adv.For Respondent(s) Mr. Pradip Jain, Adv.
Mr. Prem Ranjan Kumar, Adv.
Mr. Awanish Sinha, Adv.
Mr. Himanshu Shekhar, Adv.UPON hearing counsel the Court made the following
ORDERDelay condoned.
Leave granted.

Reasons for Staying the Impugned Judgment:

(a) Case of the Department:

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Intelligence was collected that one Shri Sangit Aggarwal and his relatives/associates were indulging in fraudulent import of PVC Cloth under Tariff Heading 5903 by way of mis-declaration of its value and description. The intelligence suggested that Shri Sangit Aggarwal used to visit China regularly. He used to place orders for import of PVC Cloth with M/s Yantai, China. He used to instruct M/s Yantai to issue invoice of actual price and value to M/s Texpo, Hong Kong. Thereafter, M/s Texpo used to issue lesser value invoices in the name of the company owned and controlled by Shri Sangit Aggarwal. The

differential amount on which customs duty stood evaded was allegedly remitted to M/s Yantai, China through hawala operators in Dubai. Consequently, offices of Shri Sangit Aggarwal, who was the proprietor of respondent firm, were searched at Delhi, Haridwar, Lucknow, Mumbai, Kolkata and Ahmedabad. His residential house was also searched. From his residential house, Rs. 23.90 lakhs were recovered. His wife informed the officers of DRI that Rs. 23.90 lakhs constituted sale proceeds of imported goods. The said amount of Rs. 23.90 lakhs in cash came to be seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the said currency was liable for confiscation as it represented the sale proceeds of smuggled goods.

(b) Case of the Importer:

Shri Sangit Aggarwal thereafter moved the High Court by filing Writ Petition (C) No. 5677/07 inter alia seeking a direction to the Department to release Rs. 23.90 lakhs seized from his premises on 10.1.2007. In the writ
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petition, it was submitted that the said amount of Rs. 23.90 lakhs represented the sale proceeds of the imported goods under the Bill of Entry dated 22.12.2006 which goods were cleared on payment of duty after assessment and therefore Section 121 of the Customs Act (which deals with confiscation of sale-proceeds of smuggled goods) was not applicable.

Issue:

The main point which arises for determination in this civil appeal is: whether mis-declaration of description and value in the facts and circumstances of this case constituted "smuggling" as defined in Section 2(39) of the Customs Act. Incidentally, we are also required to decide whether the High Court was justified in ordering unconditional release of the currency which allegedly represented the sale-proceeds of the mis-declared goods, which, if proved, were liable to be confiscated under Section 111 or Section 113. Therefore, leave stands granted.

At this stage, it is suffice to state that the case involves seizure of Rs. 23.90 lakhs, the main ground of the Department was that there was some hawala transaction going on and that the said amount appeared to have been

acquired in such a transaction. Under Section 110, the competent officer is authorized to seize such goods in respect of which he has reason to believe that they are liable to confiscation. The word "goods" is defined under Section 2(22) to include currency. Under Section 122, adjudication in respect of confiscation is provided for. Section 124 provides for show cause notice before confiscation.

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Under Section 110A provisional release of goods seized, pending adjudication, is provided for. However, looking into the facts of the present case, we are of the view prima facie that before adjudication, in exercise of writ jurisdiction on the facts of this case, the High Court ought not to have granted unconditional release of the cash. In fact, we called upon the learned counsel for the respondent to give a bank guarantee. The respondent is not in a position to give a bank guarantee for the amount which he had already withdrawn.

Hence, for the above reasons we have stayed the operation of the impugned judgment with liberty to move this Court after the order of Adjudication.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master