

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.4068 OF 2020**

M/s. Mbility Services,  
Through its Sole Proprietor,  
Mr. Mahadev Bhosale having its office at  
301, Tower 6, The Orchard Residency,  
LBS Marg, Ghatkopar West Mumbai-400 086.

..Petitioner

Versus

1. Principal Commissioner of Customs (Preventive),  
Having his office at Head Quarters Intelligence Unit,  
11<sup>th</sup> floor, Rummaging and Intelligence Division,  
New Custom House, Ballard Estate, Mumbai-400 001.
2. Raghavendra Singh,  
Joint Commissioner of Customs,  
(Preventive), R & I, Mumbai,  
having his office at Head Quarters Intelligence Unit,  
11<sup>th</sup> floor, Rummaging and Intelligence Division,  
New Custom House, Ballard Estate, Mumbai-400 001.
3. Additional Commissioner of Customs,  
i/c-JWR CFS (Export Shed),  
NS-II, JNCH, Nhava Sheva.
4. Hemangi Sandeep Kharade,  
Superintendent of Customs  
(Preventive) R & I, Mumbai,  
having office at Head Quarters Intelligence Unit,  
11<sup>th</sup> floor, Rummaging and Intelligence Division,  
New Custom House, Ballard Estate, Mumbai-400 001.
5. Rajendra Singh,  
Investigating Officer, R&I, Mumbai,  
having office at Head Quarters Intelligence Unit,  
11<sup>th</sup> floor, Rummaging and Intelligence Division,  
New Custom House, Ballard Estate, Mumbai-400 001.

6. Central Board of Indirect Taxes,  
Department of Revenue, Ministry of Finance,  
Government of India,  
North Block, New Delhi-11001.

..Respondents

Mr. Krishnamohan Menon a/w Ms. Parul Sachdeva, for the Petitioner.  
Mr. Pradeep Jetly, Senior Advocate a/w Mr. Jitendra Mishra, for the Respondents.

**CORAM : UJJAL BHUYAN &  
MILIND N. JADHAV, JJ.**

**RESERVED ON : 22.01.2021  
PRONOUNCED ON : 21.05.2021.**

**JUDGMENT (Per Ujjal Bhuyan, J.)**

Heard Mr. Krishnamohan Menon, learned counsel for the petitioner and Mr. Pradeep Jetly, learned senior counsel along with Mr. Jitendra Mishra, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs :-

“(a) this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or order or direction under Article 226 of the Constitution of India quashing and setting aside the Seizure Memo dated 28.8.20 issued by the 5<sup>th</sup> Respondent operating under the aegis of the First Respondent and hold and declare that the proceedings of seizure and detention pertaining to the said memo are illegal;

(b) this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other

appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers, subordinates, servants and agents to release the goods of the Petitioner covered under Shipping Bill No.4245853 dated 3.8.20 and permit the same to be exported duty free as per the LeT export order No.39/94 issued by Central Board of Indirect Taxes and Customs;

(c) this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or order or direction under Article 226 of the Constitution of India quashing and setting aside the Provisional Release letters dated 24.8.20 and 28.8.20 issued by the 4<sup>th</sup> and 2<sup>nd</sup> Respondents respectively with consequential relief of free export as prayed for in clause (a) hereinabove;

(d) this Hon'ble Court may be pleased to hold and declare that the prejudicial portions of Para 3 of the Circular No.33/2005-Customs dated 2.8.2005 (to the extent that it advises denial of export benefit on provisional release) and prejudicial portions of Paras 4(a) and 4(c) of Circular No.1/2011-Cus., dated 4.1.2011 (to the extent that it advises mandatory security and denial of export benefit for/on provisional release) are ultra vires Sections 110, 110A and other connected provisions of the Customs Act, 1962 and issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or order or direction under Article 226 of the Constitution of India quashing and setting aside the said prejudicial portions of the said circulars issued by the 6<sup>th</sup> Respondent;

(e) this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India directing the Respondents

themselves, their officers, subordinates, servants and agents to refund the amount of Rs.85,30,191 pertaining to the refund claims of Integrated Goods and Service Tax paid on various consignments detailed at Para 29 hereinabove along with interest and equitable consequences;

(f) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to:

i. direct the Respondents themselves, their officers, subordinates, servants and agents to release the goods of the Petitioner covered under Shipping Bill No.4245853 dated 3.8.20 and permit the same to be exported duty free as per the LeT export order No.39/94 issued by CBIC;

ii. direct the Respondents themselves, their officers, subordinates, servants and agents to refund the amount of Rs.85,30,191 pertaining to the refund claims arising out of Integrated Goods and Service Tax paid on various consignments detailed at Para 29 hereinabove alongwith interest and equitable consequences;

(g) for ad-interim reliefs in terms of prayer clause (f) above;

(h) for costs of this Petition and the Orders made thereon, and

(i) for such further and other reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

3. Facts of the case as projected in the writ petition may be briefly noted.

3.1. It is stated that petitioner is the proprietary concern of its sole proprietor Mr. Mahadev Bhosale having its office at Ghatkopar (West), Mumbai. Petitioner is registered under the customs laws and holds an importer exporter code (IEC). Petitioner is engaged *inter alia* in the business of export and domestic sales of information technology and electronic products. Petitioner is a taxable person and holds Goods and Services Tax (GST) registration.

4. On 23.07.2020 petitioner received a purchase order from a company based in United Arab Emirates called M/s. Octagon International for supply of 5000 units of 'HP V190 18.25' LED Monitor 2NK17A7 (for short and for convenience "LED Monitors" hereinafter) at an unit price of 45 USD. The total value of the purchase order was 225000 USD.

5. On 29.07.2020 petitioner received advance payment of Rs.1,67,94,767.00 in connection with the above export order.

6. Petitioner procured the items to be exported from M/s. Connect Info Solutions on 31.07.2020 for which supply invoice was raised upon the petitioner by the supplier M/s. Connect Info Solutions. Petitioner raised GST invoice on the same day for the said transaction carrying IGST payment of Rs.19,98,956.88.

7. On 01.08.2020 the domestic supplier i.e. M/s. Connect Info Solutions sent the goods to the petitioner whereafter petitioner filed shipping bill No.4245853 dated 03.08.2020 for 3317 pieces of LED Monitors. Since the consignment and documents were in order, let export order No.39/94 dated 05.08.2020 was issued. The other consignment containing 1683 pieces of LED Monitors was sought to be exported by the petitioner vide shipping bill No.4311172 dated 06.08.2020. The second consignment was permitted to be exported vide let export order No.41/4 dated 06.08.2020. It may be mentioned that both the consignments were purchased by the petitioner from the same supplier i.e., M/s. Connect Info Solutions.

8. It is stated that on 06.08.2020 petitioner received a call from the Customs Superintendent whereby certain documents and details pertaining to the transaction were sought for. Subsequently, petitioner came to know that an internal communication dated 07.08.2020 was issued from the office of the Principal Commissioner of Customs (Preventive) i.e. respondent No.1 stating that the said office was suspecting over valuation and export compliance issues in respect of the first consignment to be exported by the petitioner with an intention to claim ineligible IGST refund claim. Accordingly, it was stated that the consignment may be put on hold immediately.

9. Superintendent of Customs (Preventive) issued summons dated 11.08.2020 to the petitioner under section 108 of the Customs Act, 1962 in connection with shipping bill No.4245853 dated 03.08.2020. Petitioner responded to the summons and appeared before the concerned authority. It is stated that his statements were recorded. It may also be mentioned that Panchnama dated 13.08.2020 was drawn up in respect of the consignment which was put on hold wherein it was alleged that the consignment carrying the goods were having mis-declaration/mis-labelling.

10. It may be mentioned that letter dated 24.08.2020 was issued by the Superintendent of Customs (Preventive) and addressed to the petitioner in respect of the export consignment covered by shipping bill No.4245853 dated 03.08.2020 which was put on hold. Petitioner was requested to specify whether it intended to submit request letter in terms of Central Board of Customs and Indirect Taxes Circular No.1/2011-Customs dated 04.01.2011 for provisional release of the export consignment.

11. It is stated that owing to financial constraints, petitioner was not in a position to furnish bank guarantee for the purpose of provisional release. However, petitioner sent a formal request vide email dated

25.08.2020 to the respondents seeking release of the goods.

12. Notwithstanding such request the subject goods were seized under section 110(1) of the Customs Act, 1962 vide seizure memo dated 28.08.2020 issued by one Shri. Rajendra Singh, Intelligence Officer, Headquarters Intelligence Unit, Rummaging and Intelligence Division, Mumbai. As per the seizure memo, from an analysis of the data on record, it was suspected that petitioner was trying to export the consignment to avail undue export benefits and in contravention of the Customs Act, 1962. Therefore, the consignment was put on hold and examined under Panchnama dated 13.08.2020. In the course of examination, it was found that the cartons/packages containing the exportable goods were having misleading marking/labelling. It was noticed that the exportable goods in fact were imported to India from China by M/s. HP India Sales Pvt. Ltd., Bangalore as an exempted item. Pending investigation into possibility of duty evasion the consignment was held up as may be liable to confiscation under section 111(o) and 113(i) of the Customs Act, 1962. Therefore, the seizure was made in exercise of the powers conferred under section 110(1) of the Customs Act, 1962.

13. By subsequent internal communication dated 28.08.2020 a copy of which was marked to the petitioner, it was stated that the export



consignment covered by shipping bill No.4245853 dated 03.08.2020 may be provisionally released on submission of bond and bank guarantee. It was further stated that due to pending inquiry and final decision in the matter the export incentives/rewards of the exporter i.e. the petitioner may be withheld.

14. Petitioner has stated that the second consignment covered by shipping bill No.4311172 dated 06.08.2020 for 1683 items were cleared for export without any dispute.

15. Aggrieved, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

16. On 14.10.2020, this Court had issued notice to the respondents whereafter respondent Nos.1 to 5 filed reply affidavit through Shri. R. P. Srivastava, Assistant Commissioner of Customs (Preventive), Rummaging and Intelligence Division, Mumbai. It is stated that on the basis of data analysis, specific intelligence was developed that petitioner was exporting goods initially imported by M/s. HP India Sales Pvt. Ltd. on customs exemption notification benefits. Petitioner was exporting LED Monitors under Customs Tariff Heading (CTH) No.85287219 with IGST rate of 28% under shipping bill No.4245853 dated 03.08.2020. It was noticed that there is no manufacturing facility of M/s. HP India Sales Pvt.

Ltd. for manufacture of the said goods in India and that LED Monitors are correctly classified under CTH No.85285200 with IGST rate of 18%. Accordingly, the said consignment was put on hold.

16.1. On examination under Panchnama dated 13.08.2020, it was found that the export consignment was mis-declared in terms of section 113(i) of the Customs Act, 1962. The discrepancies noticed have been highlighted in the reply affidavit. Firstly, it is stated that the export related details on the cartons/goods, such as, exporter's name, address, consignee's details, port of discharge, country of destination, invoice number etc. as declared in the shipping bill by the exporter and by the customs broker were missing. Also the goods were found classified under incorrect customs tariff heading declaring the LED Monitors as "TV" for claiming IGST at 28%. Secondly, even the mandatory BIS mark for import of IT products remained printed on the packages/cartoons. On the back of the monitors, 'Made in China, K-tronics (Suzgiy) Technology Co. Ltd.' was engraved.

16.2. In the course of investigation, it was revealed that the goods were originally imported by M/s. HP India Sales Pvt. Ltd., Bangalore vide bill of entry No.6783433 dated 06.02.2020 under customs tariff heading No.85285200. The importer i.e. M/s. HP India Sales Pvt. Ltd. had also

availed exemption granted vide notification No.24/2005 dated 01.03.2005. It was also revealed in the course of investigation that M/s. HP India Sales Pvt. Ltd. had imported the computer monitors under CTH No.85285200 vide bill of entry No.6783433 dated 06.02.2020. Without putting the said imported goods to use, M/s. HP India Sales Pvt. Ltd. had sold it under invoice to M/s. Rashi Peripherals Pvt. Ltd..

16.3. It is thus stated that the consignment covered under shipping bill No.4245853 dated 03.08.2020 originally imported vide bill of entry No.6783433 dated 06.02.2020 by M/s. HP India Sales Pvt. Ltd. is liable to confiscation under section 111(o) of the Customs Act, 1962.

16.4. A chart has been provided by the respondents wherefrom it is stated that the goods imported by M/s. HP India Sales Pvt. Ltd. on exemption were subsequently sold to various distributors and retailers and finally to the exporter i.e. to the petitioner. However, at each successive step the price of the monitors were reduced. The exporter and his immediate supplier M/s. Connect Info Solutions had changed the CTH No.85285200 with IGST at the rate of 18% to CTH No.85287219 with IGST at the rate of 28% by mis-declaring the monitors as 'TV'. It is stated that in view of the above mis-declarations, which are being investigated by the proper officer of customs provisions of rule 96(4) of

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the Central Goods and Services Tax Rules, 2017 providing for withholding of IGST refund would get attracted.

16.5. It is further stated that on the lines of Central Board of Indirect Taxes and Customs Circular No.1/2011-Customs dated 04.01.2011, provisional release of the goods was recommended. However, it appears that the exporter i.e. the petitioner had failed to comply with the conditions of provisional release and instead has approached the Court.

16.6 In the circumstances, it is contended that the writ petition is devoid of any merit and as such is liable to be dismissed.

17. Petitioner has filed rejoinder affidavit to the reply affidavit of the respondents. It is contended that the impugned seizure is illegal since there is no ground for seizure. Section 111(o) of the Customs Act, 1962 does not apply to the present case because any seizable violation at the time of import by M/s. HP India Sales Pvt. Ltd. should have been met at that stage with a provisional assessment under sections 17/18 of the Customs Act, 1962 or a seizure and provisional release under sections 110/110A. If that was not done at the time of import, the same cannot be artificially extended after five stages of trading i.e., to the stage of export by the petitioner. After five stages of trading, the goods in question no

longer retain the character of imported goods and such goods become regularly traded goods. In any case, a violation at the end of M/s. HP India Sales Pvt. Ltd. at the time of import cannot be extended to an exporter like the petitioner who is a bonafide exporter after five stages of trading.

17.1. Referring to section 113(i) of the Customs Act, 1962, it is submitted that there is no mis-declaration to justify seizure. The term mis-declaration pre-supposes that it is a deliberate or artificial or illogical declaration and not a contestable declaration. Section 113(i) would apply when goods do not correspond in value or any material particulars made under the Customs Act, 1962.

17.2. It is submitted that respondents had admitted to 18% IGST earlier on four occasions i.e. when the goods were imported by M/s. HP India Sales Pvt. Ltd.; when the goods were sold by M/s. HP India Sales Pvt. Ltd. to the petitioner; when the petitioner's shipping bill No.4311172 dated 06.08.2020 for 1683 items were cleared without any dispute; and when the subject consignment vide shipping bill No.4245853 dated 03.08.2020 for 3317 items were cleared by issuing let export order.

17.3. Thus, there is duty implication only under IGST which had been paid by the petitioner who is now claiming the refund.

17.4. In so far the action of seizure is concerned, petitioner has referred to section 110 of the Customs Act, 1962 and submits that the said provision uses the word “may” and not the word “shall”. Therefore, discretion is vested on the customs authorities whether to seize or not to seize. Referring to para 1.24 of the Foreign Trade Policy 2015-2020, it is submitted that no seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports.

17.5. Finally, it is submitted that even if the contention of the respondents is accepted that there was any error in packaging, the same could be amended as per section 149 of the Customs Act, 1962.

18. At the time of hearing, learned counsel for the petitioner submitted that the subject goods were released provisionally under section 110A of the Customs Act, 1962. Now, the grievance of the petitioner is confined to the impugned seizure and the consequential withholding of IGST refund as well as writing letters by the respondents to the petitioner’s banker to withhold remittances. Learned counsel for the petitioner also submitted at the time of hearing that there is a clerical error in prayer clause (e) in the writ petition wherein the quantum of refund withheld has been mentioned as Rs.85,30,191.00 whereas the correct amount would be Rs.1,63,58,598.00 with interest.

18.1. Learned counsel for the petitioner submits that respondents have withheld IGST refunds of six shipping bills which would be more than Rs.1.63 crores of refund and which are unconnected with the present dispute. This is wholly illegal since the dispute centers around only one shipping bill. In so far the seizure is concerned, it is asserted that there is no violation of any provisions of the Customs Act, 1962. Therefore, there cannot be any justification for the impugned seizure. In so far IGST refund is concerned, it is submitted that petitioner had correctly paid 18% IGST and has now claimed refund of the same. In the reply affidavit, respondents have admitted that the IGST payable on the disputed consignment is 18%. Therefore, there is no case of IGST under payment or of excessive payment. That apart, petitioner has not made any refund claim for excess IGST.

18.2. Reliance placed on rule 96(4) of the Central Goods and Services Tax Rules, 2017 to justify withholding of refund of IGST is wholly misplaced as the said provision is inapplicable to the present case. It deals with cases of refund claim of unutilized input tax credit or in cases where the matter is in appeal with no stay granted or where there is likely prejudice to the revenue. In any case, provisional refund cannot be withheld. In this connection, reliance has been placed on rule 91(2) of the Central Goods and Services Tax Rules, 2017.

18.3. It is submitted that section 111(o) of the Customs Act, 1962 would not apply to the case in hand as the petitioner had not imported any goods duty free without satisfying any post import condition. Petitioner is an exporter who had purchased the goods originally imported from China by M/s. HP India Sales Pvt. Ltd. after five stages of trading. No action was taken against M/s. HP India Sales Pvt. Ltd.. Therefore, there cannot be any seizure in respect of a trader who is downstream in five stages of trading. In any case, there is no violation of section 113(i) of the Customs Act, 1962. The value was correctly declared and that was why let export order was issued for clearing the said consignment. That apart, section 110 of the Customs Act, 1962 provides a discretionary power upon the proper officer to make seizure, but before doing that he must have reason to believe that such goods are liable for confiscation. Finally, learned counsel for the petitioner submits that respondents were not at all justified to have instructed the banker of the petitioner i.e. HDFC Bank not to accept fresh foreign inward remittances for export.

19. On the other hand, Mr. Jetly, learned senior counsel for the respondents submits that for all intent and purpose the writ petition has become infructuous. The goods which were put on hold and subsequently seized have been released provisionally. Now, the remaining grievances of the petitioner would be decided upon adjudication for which show-



cause notice under section 124 of the Customs Act, 1962 is required to be issued. In the circumstances, he submits that the writ petition may be dismissed and the petitioner be relegated to the forum of the adjudicatory authority.

20. Submissions made by learned counsel for the parties have received the due consideration of the Court.

21. From the submissions made, it is now clear that the subject goods/consignment have been released provisionally. Now the grievance of the petitioner pertains to withholding of IGST refund and instructions/directives issued to the petitioner's banker not to accept related remittances. The above grievances are directly relatable to validity of the seizure dated 28.08.2020. Since the impugned seizure is central to the present *lis*, it would be apposite to extract the seizure memo dated 28.08.2020 hereunder. The seizure memo dated 28.08.2020 reads as under:-

"F. No.SD/INT/HQIU-17/2020-21

28.08.2020

**SEIZURE MEMO UNDER SECTION 110(1) OF THE CUSTOMS ACT, 1962**

Whereas through data analysis done by this office, of export consignments, it was suspected that the export consignment/goods declared as 'LED TV HP V 190 1805' LED MONITOR Part No.

2NK17A7' under CTH 85287219, being exported vide Shipping Bill No. 4245853 dated 03.08.2020 having quantity 3317 Nos. of FOB value 1.11 Cr. Claiming IGST benefits of Rs.19.98 Lakhs, by the exporter M/s Mbility Services (IEC AEQPB2212P), through Customs Broker M/s. Shriram Enterprises (CHA Code ACAPH5004KCH001), lying at JWR CFS, NhavaSheva was being tried to export to avail undue export benefits and to be making the export in contravention of the provisions of the Customs Act, 1962 and other relevant laws at the time being in force.

Therefore, the said consignment was put on hold and examined under Panchanama dated 13.08.2020. It was found through the course of examination that the cartons/packages containing the goods were having misleading marking/labelling. It was also noticed that the goods were imported in India from China by HP India Sales Pvt. Ltd., Bangalore (as per the sticker/markings on the items and packages. It is to be noted here that the items being LED monitor, appear to be imported under exemption of BCD, pending investigation into possibility of duty evasion, the same are liable to confiscation under Section 111(o) and 113(i) of the Customs Act, 1962.

Therefore, in exercise of powers conferred on me under Section 110(1) of the Customs Act, 1962, I, Rajendra Singh, Intelligence Officer, HQIU, R&I, NCH, Ballard Estate, Mumbai-400 001, hereby seize the above said consignment, and hereby direct the exporter M/s Mbility Services (IEC AEQPB2212P) and JWR CFS, NhavaSheva, the present custodian of the said goods, to not to remove, part with, or otherwise deal with the said goods except with the permission of the Joint Commissioner of Customs (P), HQIU, R&I, Mumbai.

Sd/-  
Rajendra Singh  
IO/HQIU,  
R&I, Mumbai”

22. From a perusal of the seizure memo, it is seen that according to the Intelligence Officer on an analysis of the data on record it was suspected that the export consignment of the petitioner vide shipping bill No.4245853 dated 03.08.2020 was sought to be exported to avail undue

export benefits in contravention of the provisions of the Customs Act, 1962 and other relevant laws for the time being in force. It is stated that the said consignment was put on hold and examined under Panchnama dated 13.08.2020. In the course of examination, it was found that the cartons/packages containing the goods were having misleading marking/labelling. It was also noticed that the goods were imported to India from China by M/s. HP India Sales Pvt. Ltd., Bangalore and appeared to have been imported under exemption of duty. In such circumstances, it was observed that pending investigation into possibility of duty evasion, since the export consignment/goods were liable to confiscation under section 111(o) and 113(i) of the Customs Act, 1962, therefore, in exercise of the powers under section 110(1) of the Customs Act, 1962, the Intelligence Officer seized the said consignment and directed the importer i.e. the petitioner as well as the present custodian of the goods not to remove, part with or otherwise deal with the said goods except with the permission of the Joint Commissioner of Customs (Preventive).

23. Chapter XIII of the Customs Act, 1962 (briefly “the Customs Act” hereafter) deals with searches, seizure and arrest. Sections 110 and 110A form part of Chapter XIII. While section 110 deals with seizure of goods, documents and things, section 110A deals with provisional release

of goods, documents and things seized (or bank account provisionally attached) pending adjudication. Sub section (1) of section 110 says that if the proper officer has reason to believe that any goods are liable to confiscation under the Customs Act, he may seize such goods. Though the other provisions of section 110 may not have much relevance, nonetheless we may mention that under sub section (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. However, as per the first proviso, this period of six months can be further extended for a period not exceeding six months by the Principal Commissioner of Customs or by the Commissioner of Customs. As per the second proviso, in a case where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply. As per sub section (5), the proper officer for the purpose of protecting the interest of revenue or for preventing smuggling may provisionally attach any bank account for a period not exceeding six months which period may be extended for further six months by the Principal Commissioner of Customs or by the Commissioner of Customs for reasons to be recorded in writing.

24. Section 110A provides for provisional release of seized goods amongst others pending adjudication.

25. We have already noticed that when seized goods are provisionally released under section 110A, the prescribed period of six months as provided in sub section (2) of section 110 would not be applicable.

26. From a reading of section 110, more particularly sub section (1) thereof, it is discernible that seizure is not an end in itself. Seizure can be made only if the proper officer has reason to believe that any goods are liable to confiscation under the Customs Act. Thus, a discretionary power is vested upon the proper officer to seize such goods if he has reason to believe that those goods are liable to confiscation under the Customs Act.

27. That brings us to Chapter XIV of the Customs Act which deals with confiscation of goods and conveyances and imposition of penalties. Section 111 which forms part of Chapter XIV deals with confiscation of improperly imported goods etc.. It says that the category of goods mentioned in the said section from clauses (a) to (p) brought from a place outside India shall be liable to confiscation. Respondents have placed reliance on clause (o) to contend that the seized goods may be liable to confiscation under section 111(o). Section 111(o) reads as

under :-

**“Section 111. Confiscation of improperly imported goods, etc.-** The following goods brought from a place outside India shall be liable to confiscation:-

\* \* \* \*

- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

\* \* \* \*

28. Petitioner has contended that the subject goods were imported from China to India by M/s. HP India Sales Pvt. Ltd. and petitioner had purchased the same from M/s. Connect Info Solutions after five stages of trading. No action was taken by the respondents against M/s. HP India Sales Pvt. Ltd. at the time of import if at all there was any violation. This provision cannot be invoked after five stages of trading that too at the stage when petitioner had purchased the goods, paid the IGST to the seller and on completion of all formalities obtained let export order for export.

29. Respondents have further stated that the seizure was made as the seized goods were liable to confiscation under section 113(i) of the

Customs Act. Section 113 deals with confiscation of goods attempted to be improperly exported etc.. It mentions 13 instances where exportable goods are liable to confiscation including at clause (i) which reads as under :-

**“Section 113. Confiscation of goods attempted to be improperly exported, etc.-** The following export goods shall be liable to confiscation:-

\* \* \* \*

- (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

\* \* \* \*

30. Petitioner has contended that section 113(i) is not at all attracted in the facts of the present case as there is no discrepancy in respect of value or in any material particular.

31. As per section 122, in every case under Chapter XIV in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged without limit by a Principal Commissioner of Customs or Commissioner of Customs or a Deputy Commissioner of Customs; and up to such limit by such officers, as the

Central Board of Indirect Taxes and Customs may by notification specify.

32. The adjudication procedure is dealt with in section 122A which ensures that principles of natural justice are duly complied with in such adjudication process by giving opportunity of hearing to the concerned party. Section 123 deals with burden of proof.

33. Section 124 provides for issue of show-cause notice before confiscation of goods etc.. It says that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter XIV unless the owner of the goods or such person – (a) is given a notice in writing with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter. As per the first proviso, the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral. As per the second proviso, notwithstanding issue of notice under section 124 the proper officer may issue a supplementary notice under



such circumstances and in such manner as may be prescribed.

34. Thus, it is seen that in every case in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty must be preceded by an adjudicatory process in which principles of natural justice are required to be followed but before initiation of such adjudicatory process show-cause notice under section 124 is required to be given to the owner or to the concerned person mentioning therein the grounds of proposed confiscation or penalty whereafter an opportunity of making representation is required to be given followed by reasonable opportunity of hearing.

35. While dealing with section 110, we have noticed that if within six months (extendable by another six months), no notice under section 124(a) is given post seizure; the goods shall be returned to the person from whose possession those were seized. However, the aforesaid rigor of law would not be applicable when the seized goods are provisionally released under section 110A. Does that mean that the show-cause notice contemplated under section 124 can be indefinitely deferred or delayed post seizure where the seized goods are provisionally released. In our view, such a construction would not be a reasonable one because a seizure of goods in contemplation of confiscation is a drastic measure and is

required to be adjudicated promptly.

36. In the instant case, the impugned seizure memo is dated 28.08.2020. Already sufficient time has elapsed. Therefore, it would be in the interest of justice if the same is adjudicated early. We are further of the view that having regard to the contrary stands taken by the contesting parties, which may require adjudication on facts, it would be just and proper if the impugned seizure is adjudicated by the adjudicatory authority. Since the question as to whether section 111(o) and section 113(i) may require adjudication on facts, we therefore deem it fit and proper to relegate the petitioner to the forum of adjudicatory authority for a decision on the validity or otherwise of the impugned seizure and the consequential fall out.

37. Having regard to the above, it would not be necessary to deal with the challenge to the two circulars dated 02.08.2005 and 04.01.2011. Likewise it would not be necessary to deal with the prayer for refund, which would be subject to outcome of the adjudication.

38. Accordingly and in the light of the above, we direct that the jurisdictional Principal Commissioner of Customs may authorize an appropriate officer of the customs department to adjudicate on the impugned seizure memo dated 28.08.2020 and the consequences which

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would follow by issuance of notice under section 124(a) of the Customs Act. The said notice shall be issued within a period of three weeks from the date of receipt of a copy of this judgment and order. The entire proceeding of adjudication shall thereafter be completed within a period of eight weeks from the date of issue of notice under section 124(a) of the Customs Act.

39. No opinion has been expressed on merit and all contentions are kept open.

40. Writ petition is accordingly disposed of. However, there shall be no order as to cost.

**MILIND N. JADHAV, J**

**UJJAL BHUYAN, J**