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

+ W.P.(C) 14599/2023

BHARAT SHANTILAL SHAH Petitioner

Through: Mr. Aman Lekhi, Senior Advocate with Mr. Ujjwal Sinha, Mr. Aniket Seth, Mr. Subas Acharya, Mr. Akash Agarwalla, Mr. Harsh Raj Singh, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE AND OTHERS & ANR. Respondents

Through: Mr. Aniruddha Deshmukh, Senior Standing Counsel for DRI/R-1 with Mr. Shaurya Kuthiala, Advocate.
Mr. Harpreet Singh, Senior Standing Counsel for R-2 with Mr. Jatin Kumar Gaur and Mr. Gurpreet Singh Gulati, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

09.11.2023

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1. The instant writ petition assails the validity of a Seizure Memo dated 19 January 2023 as also a **Show Cause Notice**¹ dated 17 July 2023 in terms of which the respondents have called upon the petitioner to show cause why the gold jewellery and ornaments weighing approximately 20,756 grams should not be confiscated.

2. As would be evident from the record, the seizure came to be

¹ SCN



effected on 19 January 2023 and it is only thereafter and on conclusion of a detailed investigation that the impugned SCN has come to be issued.

3. Assailing the validity of the SCN, Mr. Lekhi, learned senior counsel has contended that as would be manifest from the tenor of that notice, the respondents have already formed a definitive opinion with respect to the guilt of the petitioner and consequently no useful purpose would be served in the petitioner being compelled to answer the said SCN or to pursue the proceedings before the respondents. Learned senior counsel further contended that the statements of the petitioner which had come to be recorded in the course of investigation have also not been taken into consideration and this facet additionally lending credence to the submissions of the petitioner of a predisposition to decide the issue of confiscation against it. Mr. Lekhi also questioned the intent of the respondents to dispose of the gold even before the confiscation proceedings were completed and submitted that the same is not only violative of the provisions of the **Customs Act, 1962**² but also wholly arbitrary.

4. Controverting the aforesaid submissions, learned counsel appearing for the first respondent would contend that the SCN had itself come to be issued after an exhaustive investigation was undertaken by the respondent and in view thereof merely because the SCN was detailed, it could not be said that the competent authority had already formed a definitive opinion or come to take the position that the petitioner was guilty of offences under the Act or that the gold was intended to be confiscated without the response of the petitioner being taken into consideration.

² Act



5. Learned counsel also sought to rely upon the provisions of Section 110(1D) of the Act to submit that the power conferred by that provision upon the proper officer to dispose of the seized goods is not dependent upon an order of confiscation being passed. However, learned counsel submitted that if the Court were to consider disposal of the SCN within a particular time frame, the respondents would notwithstanding their rights and contentions and in the peculiar facts and circumstances of the present case desist from taking further action in terms of Section 110(1D) of the Act awaiting conclusion of the SCN proceedings.

6. Having evaluated the rival submissions as addressed, we note that the SCN carries the following recitals of fact and tentative conclusions as arrived at upon conclusion of investigation:-

“Modus-Operandi

102. On the basis of Panchnama dated 19-01-2023 with respect to recovery of 12,000 grams of foreign origin gold bars, Panchnama dated 19.01.2023 with respect to recovery of 20,756.3 grams of gold Jewellery/Articles (18035.26 grams manufactured from foreign origin gold bars and the gold jewellery total weighing 2721.04 grams used for the concealment of gold jewellery/articles manufactured from foreign origin gold bars), Panchnama dated 19-01-2023 with respect to recovery of 11,224.4 grams of gold Jewellery/Articles manufactured by foreign origin gold bars and gold cut piece 2818.5 grams having foreign marking and Panchnama dated 19-01-2023 with respect to recovery of 19 gold coins/bars having gross weight 450.25 grams foreign marking along with the voluntary statements tendered by the concerned persons and on the basis of other evidence brought on record and discussed above, the modus-operandi, facts of the case and role of the concerned persons are discussed here as under. It appears that-

I. A conspiracy has been hatched by Sh. Barat Shantilal Shah for dealing in the purchase and sale of smuggled gold of foreign origin and also converting purchased smuggled gold into gold jewellery/articles and selling them to local traders in Delhi;

II. Foreign-origin gold having foreign markings are smuggled



into India by some agent, and purchased by Sh. Bharat Shantilal Shah by making payment in cash;

III. Sh. Bharat Shantilal Shah used to deploy his employee(s)/persons(s) for the transportation of smuggled gold bars and gold jewellery/articles made thereof from different parts of county.

IV. Planning was made by Sh. Bharat Shantilal Shah for the execution of the operation for bringing the smuggled gold bars having foreign markings from Chennai to New Delhi and gold jewellery/articles manufactured from the smuggled gold from Mumbai to New Delhi. For carriage and transportation of the smuggled gold bars having foreign origin marking from Chennai to New Delhi, Sh. Manish Kumar, Sh. Naresh Kumar, Sh. Krishi D. Jain were deployed as carriers and were aided by Sh. Sanjay Ram.

V. A syndicate was being run by Sh. Bharat Shantilal Shah for carriage and transportation of the gold jewellery/articles manufactured from the smuggled gold from Mumbai to New Delhi. Sh. Subhash Tukaram Karan & Sh. Sanjay Ram, were deployed as carriers for delivery of gold jewellery/articles.

102.1 As per the statements of the concerned persons & evidences brought on record above, it appears that:

- Sh. Bharat Shantilal Shah was the main financier/owner for the purchase of smuggled gold bars having foreign markings from Chennai and used to make payment in cash for purchase of the same;

- He used to either sell smuggled gold bars in Delhi or manufacture gold jewellery/articles from smuggled gold bars having foreign markings in Mumbai and used to supply these gold jewellery/ articles to local jewellers in Delhi;

- On the directions of Sh. Bharat Shantilal Shah, Sh. Krishi D. Jain, who is his nephew procured smuggled gold bars having foreign markings from some agent in Chennai and delivered such gold bars to Sh. Manish Kumar and Naresh Kumar.

- On the directions of Sh. Bharat Shantilal Shah, Sh. Manish Kumar and Sh. Naresh Kumar traveled from Mumbai to Chennai via flight booked by Sh. Bharat Shantilal Shah and collected smuggled gold bars having foreign markings from Sh. Krishi D. Jain in Chennai at his (Sh. Krishi d Jain's) residence in Chennai. Sh. Bharat Shantilal Shah booked their train tickets through Mumbai based travel agent named Aashit Sangghvi to bring smuggled gold bars having foreign markings from Chennai to



Delhi.

• Sh. Bharat Shantilal Shah received smuggled gold bars having foreign markings from Sh. Manish Kumar and Sh. Naresh Kumar in a hotel room in Delhi which was telephonically booked by Sh. Bharat Shantilal Shah.

• Sh. Bharat Shantilal Shah also procured smuggled gold bars/cut pieces having foreign markings in Delhi from Sh. Manish Kumar and Sh. Naresh Kumar for supply of the same to local Jewellers in Delhi.

• Sh. Bharat Shantilal Shah also used to manufacture gold jewellery from the smuggled gold bars having foreign markings in Mumbai procured by him from some suppliers and thereafter used to supply these gold jewellery/ articles to local jewelers in Delhi with the help of Sh. Subhash Tukaram Karan. Sh. Sanjay Ram used to assist Sh. Bharat Shantilal Shah and Sh. Subhash Tukaram in sale of the gold jewellery/articles made/manufactured from smuggled foreign origin gold to local buyers in Delhi. Tickets for the journey undertaken by Sh. Subhash Tukaram used to be booked by Sh. Bharat Shantilal Shah through Mumbai based travel agent named Aashit.

• Sh. Bharat Shantilal Shah used to collect all payments with respect to sale of gold jewellery/articles made/manufactured out of smuggled gold bars in cash.

• Under the cover of sale invoice(s) of small quantity of gold jewelry, Sh. Bharat Shantilal Shah used to send large quantities of gold jewelry made out of smuggled gold along with it.

• Sh. Bharat Shantilal Shah used to pay commission to the carriers/ Members for bringing the smuggled gold from Chennai to New Delhi or from Mumbai to New Delhi. Further, Sh. Bharat Shantilal Shah used to bear all the travel and other expenses i.e. travel tickets, stay expenses and food expenses etc. for the member of the said syndicate.

Therefore, in view of above, it appears that Sh. Bharat Shantilal Shah knowingly and intentionally indulged himself in the prejudicial activity of purchasing, transporting, carrying, selling and dealing with smuggled gold bars having foreign markings from Chennai to New Delhi for monetary consideration. He also knowingly and intentionally indulged himself in the prejudicial activity of carrying, selling and dealing with gold jewellery manufactured from smuggled gold bars having foreign markings from Mumbai to Delhi for monetary consideration.



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LEGAL PROVISIONS:-

103. And, whereas, imports and exports of goods and services or technology into India/from India is governed by the Foreign Trade (Development and Regulation) Act, 1992. Rules and Regulations made there under Sub-section (2) of the Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 empowers the Central Government to make provisions for prohibiting, restricting or otherwise regulating in all cases or in specified classes of cases and subject to such exception, if any, as may be made by or under the order, the import or export of goods or services and technology. Further, in terms of sub-section (4) of Section 3 of Foreign Trade (Development and Regulation) Act, 1992, rules and orders made there under, no permit or license shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under the Foreign Trade (Development and Regulation) Act, 1992. However, this provision shall not be applicable in the cases of absolute prohibition and conditional prohibition imposed on import and export under any other law rule, regulation, notification or order. Provisions relating to import and export of goods and services or technologies under various laws are formulated and incorporated from time to time in Foreign Trade Policy announced under Section 5 of Foreign Trade (Development and Regulation) Act, 1992. Further, under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of the Foreign Trade (Development and Regulation) Act, 1992, the rules and orders made there under and the Foreign Trade Policy for the time being in force.

103.1 In view of the above, it appears that the provisions of the Foreign Trade (Development and Regulation) Act, 1992, provisions of rules and orders issued under the said Act and the Import Policy regime under Foreign Trade Policy as applicable during the relevant time are the statutory provisions of law of import, except to the extent where the application of the Foreign Trade (Regulation) Rules, 1993, made under Section 19 of the Foreign Trade (Development and Regulation) Act, 1992 has been exempted under the Foreign Trade (Exemption from Application of Rules in certain cases) Order, 1993, made under Section 3 read with Section 4 of the Foreign Trade (Development and Regulation) Act, 1992.

103.2 In terms of para 2.01 (b) of foreign Trade Policy, 2015-20 which came into force w.e.f. 01.04.2015, there are some items which are free for import/export, subject to conditions stipulated in other Acts or law for the time being in force, import of these items



do not require any license/authorization/permission from the DGFT. However, some of these items are subject to the Policy conditions as well as subject to conditions under any other law for the time being in force. Section 3(2) of Foreign Trade (Development and Regulations) Act 1992, empowers Central Government to make provisions for prohibiting, restricting or otherwise regulating imports of goods. Notification No. 49/2015-2020 dated 05.01.2022 has been issued by DGFT, Ministry of Commerce whereby import of Gold has been restricted subject to certain conditions. Further, under Section 3 (3) of FT (D&R) Act 1992, the goods to which any order under Section 3(2) applies have been deemed to be goods prohibited under Section 11 of the Customs Act, 1962.

103.3 And, whereas, during the relevant period under Import Policy regime, import of gold into India was subject to RBI regulations. The Reserve Bank of India vide A.P. (DIR Series) Circular No. 79 dated I 8.02.201 5, permitted import of gold by nominated banks and nominated agencies as notified by DGFT to import gold on consignment basis. Vide said circular dated 18.02.2015, Star and Premier Trading Houses can also import gold on document against payment (DP) basis as per entitlement without any end use restrictions.

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103.5 And, whereas, on the basis of the evidence discussed in paras supra, it categorically emerges that the seized gold bars total weighing 12,000 Grams, gold cut pieces 2818.5 Grams, and gold bars/ gold cut pieces used in the manufacturing of 18035.26 grams gold jewellery/ articles (excluding the gold jewellery totally weighing 2721.04 grams used for the concealment of gold jewellery/ articles and covered under two invoices no. SG-460 dated 17.01.2023 and SG-160 dated 18.01.2023 out of total gold jewellery/articles i.e., 20,756.3 grams recovered from Sh. Subhash Tukaram Karan) & 11,224.4 grams of gold Jewellery, and 19 gold coins/ bars having gross weight 450.25 grams were of foreign origin. The seized gold was neither imported by nominated banks/ nominated agencies as notified by DGFT nor was imported by an eligible passenger, hence, the gold of foreign origin seized in the instant case squarely falls well within the definition of "Illegal import" as defined under Section 11 (A) (a) of the Customs Act, 1962.

103.6 And, whereas, on the basis of the evidences brought on record, it appears that the seized gold bars/cut pieces of smuggled gold and gold bars/ gold cut pieces used in the manufacturing of gold Jewellery did not pass through the regular and legal channels of "baggage", "customs airport", "customs area" and "customs port"



as defined under section 2(3), 2(10), 2(11) and 2(12) respectively of the Act. It also follows from the evidences discussed herein that no Bill of entry, as defined under Section 2(4) of the Act *ibid* was filed and no examination (as defined under section 2(17) of the Act) in respect of the "goods", as defined under section 2(22) of the Act *ibid*, was done. Consequently, no assessment, as defined under section 2(2) was done and hence no duty, as defined under section 2(15) was paid.

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103.9 And, whereas, gold is a restricted item for import. It appears that a passenger has to overcome statutory disabilities to import gold as a part of his baggage. Similarly, only the notified canalizing agency is eligible to import gold. The non-compliance of restrictions shall be tantamount to prohibition. On the basis of evidences brought on record, it appears accordingly that Sh. Bharat Shantilal Shah, Sh. Manish Kumar, Sh. Naresh Kumar, Sh. Krishi D Jain, Sh. Subhash Tukaram Karan and Sh. Sanjay Ram, Sh. Pawan Soni, Sh. Sunil Khandelwal and Sh. Sanjay Khandelwal have willingly and knowingly indulged in dealing, concealing, possession, collection, transportation and selling of smuggled gold of foreign origin thereby dealing in prohibited goods, as defined under section 2(33) apart from smuggling, as defined under section 2(39) of the Act *ibid*.

103.10 And, whereas, on the basis of evidences brought on record, it transpires that the seized gold bars totally weighing 12,000 Grams, and gold cut pieces 2818.5 Grams, and gold bars/gold cut pieces used in the manufacturing of 18035.26 grams gold jewellery/ articles (excluding the gold jewellery totally weighing 2721.04 grams used for the concealment of gold jewellery/ articles and covered under two invoices no. SG-460 dated 17.01.2023 and SG-160 dated 18.01.2023 out of total gold jewellery/articles i.e., 20,756.3 grams recovered from Sh. Subhash Tukaram Karan) & 11,224.4 grams of gold Jewellery, and 19 gold coins/bars having gross weight 450.25 grams have been imported into the country illegally and illicitly in contravention of the provisions discussed above. Further, for import of gold through legalized channel during the relevant time, the importer is required to fulfil the precondition of compliance of imports with domestic laws/ rules/ order/ regulations etc. having IEC number, eligible passenger to import through baggage, nominated agencies etc. as applicable. It appears that the seized gold bars totally weighing 12,000 Grams, and gold cut pieces 2818.5 Grams and gold bars/ gold cut pieces used in the manufacturing of 18035.26 grams gold jewellery/ articles (excluding the gold jewellery totally weighing 2721.04 grams used for the concealment of gold jewellery/ articles and covered under two invoices no. SG-460 dated 17.01.2023 and SG-160 dated



18.01.2023 out of total gold jewellery/articles i.e.,20,756.3 grams recovered from Sh. Subhash Tukaram Karan) & 11,224.4 grams of gold Jewellery, and 19 gold coins/ bars having gross weight 450.25 grams were illegally and illicitly imported in contravention of the prohibition/ restrictions/ regulations imposed during the relevant time issued by the Central Government. Hence, the smuggled gold bars totally weighing 12,000 Grams, and gold cut pieces 2818.5 Grams and gold bars/ gold cut pieces used in the manufacturing of 18035.26 grams gold jewellery/ articles (excluding the gold jewellery totally weighing 2721.04 grams used for the concealment of gold jewellery/ articles and carried under two invoices no. SG-460 dated 17.01.2023 and SG-160 dated 18.01.2023 out of total gold jewellery/articles i.e., 20,756.3 grams recovered from Sh. Subhash Tukaram Karan) & 11,224.4 grams of gold Jewellery, and 19 gold coins/ bars having gross weight 450.25 grams having foreign marking recovered from the shop premises of M/s Khandelwal Chain CO. which were illicitly and illegally imported by the unscrupulous person(s), tantamount to 'prohibited goods' as envisaged under Section 2(33) of the Customs Act, 1962.

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Proposal for Confiscation and penalty

110. And, whereas, from the facts of the case brought on the record above, it appears that the seized gold bars, gold cut pieces of foreign origin and gold used in manufacturing of gold jewellery/ articles were of foreign origin and appear to have been illegally smuggled. Therefore, on a reasonable belief that the recovered gold bars totally weighing 12,000 gram, gold cut pieces collectively weighing 2818.5 grams were smuggled gold of foreign origin and were seized vide Seizure Memo dated 19.01.2023. Further, on a reasonable belief that 18035.26 grams gold jewellery/ articles and 11,224.4 grams of gold jewellery were made/manufactured from the smuggled gold, the same were also seized vide Seizure Memo dated 19.01.2023.

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119. And whereas, it appears that gold and manufacturers thereof are covered under Section 123(2) of the Customs Act, 1962. It further appears that Sh. Bharat Shantilal Shah hatched a conspiracy for dealing in smuggled gold bars and gold Jewellery made/manufactured from foreign origin smuggled gold. He knowingly made planning for execution of operations for dealing in smuggled gold, which they knew is liable to confiscation under Section 111 of the Customs Act, 1962. Further, he also tried to plant certain documents created afterward to coverup the seized gold jewellery. Therefore, it appears that Sh. Bharat Shantilal Shah



is liable for penal action under Section 112 (a), 112 (b) and 114AA of the Customs Act, 1962.

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124. And, whereas, it further appears that Sh. Bharat Shantilal Shah, Manish Kumar, Naresh Kumar, Subhash Tukaram Karan, Sanjay Ram, Krishi D Jain at the time of seizure & during the course of investigations failed to discharge the onus to prove that the seized gold recovered and seized from the possession of Sh. Manish Kumar, Naresh Kumar, Subhash Tukaram Karan and from the shop premises of Pawan Soni M/s Bikaner Jewellers on 19.01.2023 was not the smuggled gold. Therefore, the seized gold bars totally weighing 12,000 Gram and gold cut pieces collectively weighing 2818.5 Grams which was illegally and illicitly imported, contrary to prohibition imposed under various laws discussed on the importability of gold by way of regulation/ restriction/ control/ order etc. is liable for confiscation under Section 111(b) and Section 111(d) of the Customs Act, 1962.

125. Now therefore,

(i) **Sh. Bharat Shantilal Shah S/o Sh. Shantilal Shah**, (DOB 07.01.1974) R/o 203, Mohan Palace CHS Ltd., 57th Road, 3rd TPS, Borivali (West), Mumbai- 92,

(ii) **Sh. Manish Kumar S/o. Sh. Nag Raj**, R/o 564, Haveli Vass, Koselo, Pali, Rajasthan 306708;

are hereby called upon to Show Cause to the **Pr. Commissioner of Customs(Preventive), New Custom House, Near IGI Airport, New Delhi-110037** as to why:

I. 07 gold bars of foreign origin having foreign marking collectively weighing 7,000 grams having tariff value of Rs. 3,49, 11,660/- (Rupees Three Crore Forty Nine Lakh Eleven Thousand and Six hundred sixty only) recovered from the possession of Sh. Manish Kumar under Panchnama dated 19.01.2023 and seized vide Seizure Memo dated 19-01-2023 should not be confiscated under Section 111(b) and Section 111 (d) of the Customs Act, 1962;

II. the Indian currency amounting to Rs. 1, 17,590/- recovered and seized from the possession of Sh. Manish Kumar should not be treated as monetary consideration for transportation/delivery of gold bars from Chennai to New Delhi and should not be confiscated under Section 121 of the Customs Act, 1962;

III. the seized packing and concealing material used for packing and concealing of the seized gold bars should not be confiscated under Section 118 and Section 119 of the Customs Act, 1962;



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128. Now therefore,

(i) Sh. Bharat Shantilal Shah S/o Sh. Shantilal Shah, (DOB 07.01.1974) R/o 203, Mohan Palace CHS Ltd., 57th Road, 3rd TPS, Borivali (West), Mumbai-92,

(ii) Sh. Subhash Tukaram Karan S/o Sh Tukaram Karan R/O
Room No. 2, Shakti Chawl, Dombivali West, Maharashtra 421201;

(iii) Sh. Anand Dasmal Shah S/o Late Shri Dasmal Chogmalji
Shah, partner in Anand Shah Jewels LLP, 10tr Floor, Wing B,
Diamond Court, Napean Sea Road, Mumbai, Mumbai City,
Matrarashha- 400026;

are hereby called upon to Show Cause to **the Pr. Commissioner of Customs(Preventive), New Custom House, Near IGI Airport, New Delhi-110037** as to why:

I. gold jewellery totally weighing 2721.04 grams which were used for the concealment of gold jewellery/ articles and covered under two invoices no. SG-460 dated 17.01.2023 and SG-160 dated 18.01.2023 recovered from the possession of him under Panchnama dated 19.01.2023 and seized vide Seizure Memo dated 19.01.2023 should not be confiscated under Section 119 of the Customs Act, 1962;

129. Now therefore,

(i) Sh. Bharat Shantilal Shah S/o Sh. Shantilal Shah,
(DOB 07.01.1974) R/o 203, Mohan Palace CHS Ltd., 57th Road, 3rd TPS, Borivali (West), Mumbai- 92,

(ii) Sh. Pawan Soni S/o Sh. Bhanwar Lal Dhupar, M/s
Bikaner Jewellers, 1170, 2nd Floor Kucha Mahajani,
Chandni Chowk, Delhi-06

are hereby called upon to Show Cause to **the Pr. Commissioner of Customs(Preventive), New Custom House, Near IGI Airport, New Delhi-110037** as to why:

I. gold cut pieces (5 gold pieces, 15 very small uneven cut pieces and 17 uneven cut pieces) of foreign origin collectively weighing 2818 having total tariff value Rs. 1,40,13,743/- (Rupees One Crore Forty lakh Thirteen Thousand Seven Hundred Forty Three only) recovered from the shop premises of M/s Bikaner Jewellers 1170, Second Floor, Kucha Mahajani, Chandni Chowk, Delhi- 110006 under Panchnama dated 19.01.2023 and seized vide Seizure Memo dated 19.01.2023 should not be confiscated under Section



111(a)/(b) and Section 111 (d) of the Customs Act, 1962 as Sh. Bharat Shantilal Shah has claimed himself the owner of the said gold cut pieces and the same has been admitted by **Sh. Pawan Soni** S/o Sh. Bhanwar Lal Dhupar, M/s Bikaner Jewellers;

II. gold jewellery made/ manufactured from gold of foreign origin collectively weighing 11,224.4 grams having total tariff value Rs. 5,38,68,684/- (Rupees Five Crore Thirty Eight lakh Sixty Eight Thousand Six Hundred Eighty Four only) recovered from the shop premises of M/s Bikaner Jewellers 1170, Second Floor, Kucha Mahajani, Chandni Chowk, Delhi- 110006 under Panchnama dated 19.01.2023 and seized vide Seizure Memo dated 19.01.2023 should not be confiscated under Section 111 (a)/(b) and Section 111 (d) of the Customs Act, 1962 as Sh. Bharat Shantilal Shah has claimed himself as the owner of the said gold jewellery and the same has been admitted by **Sh. Pawan Soni** S/o Sh. Bhanwar Lal Dhupar, M/s Bikaner Jewellers;

III. the seized packing and concealing material used for packing and concealing of the seized gold should not be confiscated under Section 118 and Section 119 of the Customs Act, 1962;”

7. On a due consideration of the aforesaid passages as appearing in the SCN, we find ourselves unable to sustain the submission of Mr. Lekhi of the same being indicative of the respondents having predetermined the entire issue. As would be evident from a close reading of the aforesaid recitals, the same clearly appears to be based on a tentative view and conclusion that the respondents appear to have arrived at. This is evident from the SCN using the expression “*it appears*” at more than one place.

8. We, on a holistic consideration of the SCN, find ourselves unable to accept the contention that the same is a manifestation of a predisposed state of mind of the respondents. We also bear in mind the well settled principle that courts should desist from entertaining challenges to SCNs’ and interference being warranted only in exceptional circumstances and where it be found that the same is questioned on jurisdictional grounds. The challenge as mounted in terms of the instant writ petition clearly fails to meet the aforesaid



tests as formulated.

9. While we are thus inclined to negative the challenge laid to the impugned SCN, we also take into consideration the submission of the learned counsel appearing for first respondent and who had on instructions stated that they would hold their hands and not proceed further under Section 110(1D) of the Act and in terms of the Notice dated 17 May 2023 awaiting the outcome of the SCN proceedings.

10. Accordingly, and while the challenge to the SCN dated 17 July 2023 fails, we dispose of the writ petition by observing that the competent authority shall endeavour to dispose of and conclude the SCN proceedings within a period of two months from today. The aforesaid time frame would, though needless to state, be subject to the petitioner extending full co-operation in the expeditious disposal of those proceedings.

11. Taking note of the statement made on behalf of the first respondent, we additionally provide that any further action under Section 110(1D) of the Act shall be deferred and would abide by the final decision that may be taken upon conclusion of the SCN proceedings.

12. The writ petition along with pending applications, if any, shall stand disposed of. All rights and contentions of respective parties are kept open to be addressed before the competent authority.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 09, 2023/neha