
(2021) 07 BOM CK 0025

Bombay High Court

Case No: Writ Petition (L) No. 7989, 7993, 8014, 8028 Of 2021

Minal Gems And
Others

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: July 7, 2021

Acts Referred:

- Customs Act, 1962 - Section 110, 110A, 110(1), 110(2), 124, 124(a)

Hon'ble Judges: Dipankar Datta, CJ; G. S. Kulkarni, J

Bench: Division Bench

Advocate: B. M. Chatterji, Shreyash Shah, R. P. Singh, Pradeep S. Jetly, Sangeeta Yadav

Final Decision: Disposed Of

Judgement

1. All these writ petitions involve similar facts and question of law and, as such, they are being disposed of by this common order.2. Writ Petition (L)

No. 7993 of 2021 is directed against the seizure memo dated November 2, 2020 [at page 62], and Writ Petition (L) Nos. 7989, 8014 & 8028 of 2021

are directed against the seizure memos dated October 31, 2020 [at page 56, 101 & 51, respectively]. Cut and polished diamonds, which the petitioners

sought to export, were seized on the ground indicated in paragraph 2 of such seizure memos.3. On February 2, 2021, the petitioner in Writ Petition (L)

No. 7993 of 2021 prayed for provisional release of the seized goods. Such prayer was not considered; instead a show-cause notice dated April 20,

2021 under section 124 of the Customs Act, 1962 (hereinafter ""the Act"" for short) [at page 311] came to be issued calling upon the petitioner to

explain why the seized goods shall not be confiscated. Similar show-cause notices 18-WP-7993-21 & Connected were issued to the other petitioners.

Although Mr. Chatterji, learned senior advocate appearing in support of the writ petitions, submits that replies to the show-cause notices have been

submitted by the petitioners, Mr. Jetly, learned senior advocate for the respondents seems to be right in his contention that such replies are not on

record.⁴ Be that as it may, the petitioner in Writ Petition (L) No. 7993 of 2021 by a representation dated May 20, 2021 submitted to the

Joint/Additional Commissioner of Customs has again prayed for provisional release of the seized goods under section 110A of the Act. Similar such

representations by the other petitioners are also on record.⁵ It is at this juncture that we are considering Writ Petition (L) No. 7993 of 2021 and the

other writ petitions.

Minal Gems vs Union Of India And 2 Ors on 7 July, 2021⁶. The contention of Mr. Chatterji is that notwithstanding the pendency of proceedings under

section 124 of the Act, there is nothing in the Act that precludes consideration of an application for provisional release of goods under section 110A.

On the other hand, Mr. Jetly submits that once proceedings under section 124 of the Act have been initiated, question of considering an application for

provisional release of the seized goods does not arise.⁷ We are, therefore, tasked to decide the short question as to whether during the pendency of

proceedings under section 124 of the Act, consideration of an application for provisional release is barred.^{18-WP-7993-21 & Connected}⁸. Section

110(1) empowers a proper officer to seize goods, if he has reason to believe that the same are liable to confiscation under the Act. Section 110(2)

ordains that if no notice under clause (a) of section 124 of the Act is issued within six months of the seizure of the goods, the goods shall be returned

to the person from whose possession they were seized. The second proviso to sub-section(2) lays down that should there be an order of provisional

release of the seized goods under section 110A, the specified period of six months shall not apply.⁹ The legal position emerging from a bare reading

of the aforesaid statutory provisions is that in default of issuance of notice under section 124 of the Act within six months of seizure, the person from

whose possession the goods are seized can claim, as a matter of right, return of the seized goods; and in such a case, in view of the second proviso to

sub-section (2) of section 110, the specified period of six months to issue a notice would not apply, meaning thereby that a notice could follow even

thereafter.10. Section 110A of the Act, inserted by way of amendment with effect from July 13, 2006, reads as under: -""110A. Provisional release of

goods, documents and things seized pending adjudication. - Any goods, documents or things seized under section 110, may, pending the order of the

adjudicating authority, be released to the owner on taking a bond from him in the 18-WP-7993-21 & Connected proper form with such security and

conditions as the adjudicating authority may require.11. The words ""pending the order of the adjudicating authority"" are important for the purpose of

deciding the question formulated above. We are inclined to the view that notwithstanding the pendency of proceedings initiated by issuance of a show-

cause notice under clause (a) of section 124 of the Act, the adjudicating authority may, in its discretion, allow a provisional release on such conditions

as he may require fit to impose. We have not been shown any provision by Mr. Jetly which expressly, or even by necessary implication, bars a

provisional release once proceedings under section 124 are initiated; on the contrary, the legislative intent in section 110A, introduced by way of an

amendment, is clear that even during pendency of proceedings before the adjudicating authority, such authority is conferred the discretionary power to

allow provisional release.

Minal Gems vs Union Of India And 2 Ors on 7 July, 202112. In such view of the matter, we dispose of all these writ petitions granting liberty to the

adjudicating authority to carry forward the proceedings initiated under section 124 of the Act in accordance with law. We also observe that

notwithstanding the pendency of the proceedings under section 124 of the Act, the adjudicating authority ought to consider the prayers for provisional

release of the seized goods made by the petitioners by representations dated February 2, 2021 and May 20, 2021 in accordance with law. Let a

decision be given on such Connected representations as early as possible, but not later than three weeks of receipt of a copy of this order.¹³ There

shall be no order for costs.¹⁴ All contentions on the merits of the rival claims are kept open.