A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CUSTOM APPEAL No. - 14 of 2026

Commissioner Of Customs (Preventive) Lucknow
.....Appellant(s)

Versus

Shri Suresh Chand Gupta
.....Respondent(s)

Counsel for Appellant(s) : Dheeraj Srivastava
Counsel for Respondent(s) : Jameel Ahmad

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

(Judgment Dictated In Open Court by Shekhar B. Saraf,J.)

1. Heard Sri Dheeraj Srivastava, learned counsel appearing on behalf of the petitioner and Sri Vineet Kumar Singh, Advocate assisted by Sri Jameel Ahmad, learned counsel for the respondent.

2. This is an appeal under Section 130 of the Customs Act, 1962, wherein following substantial questions of law have been raised by the **appellant-Revenue:-**

> *"**(a)** Whether, upon an order of adjudication having already been passed in respect of the seized goods, the jurisdiction to direct provisional release under Section 110A of the Customs Act, 1962 could be exercised by the CESTAT?*
>
> ***(b.)** Whether the CESTAT is justified in directing provisional release of gold notified under Section 123 of the Customs Act, 1962, without considering the statutory presumption regarding its smuggled character, the Respondent's failure to discharge the reverse burden of proof, and the restrictions prescribed by CBIC Circular No. 35/2017-Cus. dated 16.08.2017?*
>
> ***(c.)** Whether an order directing provisional release is sustainable in law when the applicant withheld from the CESTAT the material facts concerning the adjudication of the show-cause notice and the subsequent appellate proceedings,*

> *both of which had a direct bearing upon the applicability of Section 110A of the Customs Act, 1962?"*

3. Upon a perusal of the facts, it appears that on 20th of August, 2024, acting on specific intelligence, the officers of the Directorate of Revenue Intelligence, Lucknow Zonal Unit intercepted a Toyota Innova Crysta car bearing registration No. UP-53-CV-0904 wherein gold pieces and gold jewelleries were recovered and seized by the Custom Authorities. Subsequently, the respondents filed an application under Section 110 A of the Custom Act on 30th of December, 2024 seeking provisional release of the seized gold and jewellery. The said application was rejected by the Additional Commissioner of Customs (Preventive), Lucknow on 3rd of July, 2025.

4. An appeal was preferred by the respondent before the Commissioner (Appeals), Customs, which was also rejected vide order dated 02.09.2025. This order was further assailed before the CESTAT and the CESTAT vide order dated 02.06.2026 directed provisional release of the seized primary gold and gold jewellery subject to certain conditions.

5. It is to be noted that while respondent was praying for provisional release of the goods, the Adjudicating Officer passed adjudicating order confiscating the goods on 27th of November, 2025. This order was challenged by the respondent before the Commissioner (Appeals). The Commissioner (Appeals), vide order dated 16.02.2026 quashed the adjudicating order and remanded the matter before the Adjudicating Officer.

6. In light of the same, it is clear that on the date the Tribunal passed the order, there was no order with regard to the confiscation of the gold jewellery and gold items.

7. In light of the factual findings, it is clear that Question No. (a) that has been raised by the appellant is of no consequence whatsoever, as the order of adjudication had already been set aside before the Tribunal passed its order. With regard to the Question No. (c), it is again clear that since the adjudication of the show cause notice and the subsequent appellate proceedings had led to the adjudicating order being set aside, the said factual aspect would not be relevant for deciding the issue of provisional release of the goods by the CESTAT.

8. With regard to the Question No. (b), learned counsel for the appellant has stated that the CBIC Circular bearing No. 35/2017-Cus. dated 16.08.2017 would apply in the present case and there is a specific prohibition with respect to the release of goods. He refers to Para-2 of the said Circular that is delineated below:-

> *"**2.** While provisional release of seized imported goods under Section 110A of the Customs Act, 1962 may normally be considered by the competent adjudicating authority upon a request made by the owner of the seized goods, provisional release shall not be allowed in the following cases-*
>
> *(i) Goods prohibited under the Customs Act, 1962 or any other Act for the time being in force;*
>
> *(ii) Goods that do not fulfill the statutory compliance requirements / obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;*
>
> *(iii) Goods specified in or notified under Section 123 of the Customs Act, 1962;*
>
> *(iv) Where the competent authority, for reasons to be recorded in writing believes that the provisional release may not be in the public interest."*

9. This issue had already been set to rest by the Delhi High Court in its Judgment in **Additional Director General (Adjudication) Vs. Its My Name Pvt. Ltd.; 2021 (375) E.L.T. 545 (Del.)** wherein the High Court held as follows**:-**

> *"**51.** The learned ASG also placed pointed reliance on Circular 35/2020-Cus supra, issued by the CBEC, para 2 of which absolutely proscribes provisional release of "goods prohibited under the Customs Act, 1962 or any other Act for the time being in force", "goods that do not fulfil the statutory compliance requirements/obligations in terms of any Act, Rule, Regulation or any other law for the time being in force; and "goods specified in or notified under Section 123 of the Customs Act, 1962". Mr. Ganesh relied on Agya Import Ltd10, which holds that para 2 of the said Circular was merely in the nature of a "general guideline", and did not incorporate any mandate. We, having perused para 2 of Circular 35/2017-Cus supra, vis-à-vis Section 110A of the Act, are not inclined to be so magnanimous. According to us, para 2 of Circular 35/2017-Cus is clearly contrary to Section 110A and is, consequently, void and unenforceable at law. It is not permissible for the CBEC, by executive fiat, to incorporate limitations, on provisional release of seized goods, which find no place in the parent statutory provision, i.e. Section 110A of the Act. Executive instructions may, it is trite, supplement the statute, where such supplementation is needed, but can never supplant the statutory provision. By excluding, altogether, certain categories of goods, from the*

> *facility of provisional release, para 2 of Circular 35/2017-Cus supra clearly violates Section 110A, whereunder all goods, documents and things, are eligible for provisional release. Goods, which are eligible for provisional release under Section 110A of the Act, cannot be rendered ineligible for provisional release by virtue of the Circular. (Be it noted, here, that we refer to the "eligibility" of the goods for provisional release, as distinct from the "entitlement" thereof, which has to be determined by the adjudicating authority in exercise of the discretion conferred on her, or him, by Section 110A.) Para 2 of Circular 35/2017-Cus, therefore, effectively seeks to 29 Lok Prahari v State of U.P., (2016) 8 SCC 389, which digests several earlier decisions. supplant Section 110A, to that extent, and has, therefore, to be regarded as void and unenforceable at law.*
>
> ***52.** An executive instruction, which runs contrary to the parent statute and is, therefore, void and unenforceable and, in view thereof, need not be challenged. It is stillborn ab initio, faultily conceived; its evisceration, by legal process, is entirely unnecessary. As such, the reliance, by the Learned ASG, on the absence of any specific challenge, by the respondent, to the Circular, fails to impress."*

10. It is to be noted that this matter was taken up by way of SLP before the Hon'ble Supreme Court and the same was disposed of by allowing provisional release with the modification of enhancement of the amount of bank guarantee vide judgment passed in ***Additional Director General (Adjudication) Vs. Its My Name Pvt. Ltd. reported in 2021 (375) E.L.T. A160 (S.C.).***

11. In light of ratio of the judgment of the Delhi High Court, we are of the view that CBIC Circular cannot have overriding effect, so as to dilute Section 110-A of the Act. Any such dilution by way of Circular is impermissible in law, as the Subordinate Legislation cannot supplant the main Legislation.

12. In view of above, Substantial Question No. (b) is answered in the affirmative and in favour of respondent herein.

13. With the above observations/directions, the appeal is **dismissed.**

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(Abdhesh Kumar Chaudhary,J.) **(Shekhar B. Saraf,J.)**

August 31, 2026
Anuj Singh