



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

**Reserved on: 25<sup>th</sup> April, 2025**  
**Pronounced on: 13<sup>th</sup> May, 2025**

+ CRL.M.C. 671/2013 & CRL.M.A. 2187/2013

DIRECTORATE OF REVENUE INTELLIGENCE .....Petitioner

Through: Mr. Satish Aggarwala, Senior  
Standing Counsel with Ms. Shagun  
Vaswani, Advocate.

versus

SWARAJ INTERNATIONAL & ANR. ....Respondents

Through: Mr. Ramakant Gaur, Ms. Sneha Arya,  
Ms. Harshi Gaur, Ms. Meenakshi  
Sahu, Ms. Roopini Nandan and Ms.  
Sobiya Manzoor, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J.:**

1. The Directorate of Revenue Intelligence,<sup>1</sup> through the present petition, under Section 482 of the Code of Criminal Procedure, 1973, assails order dated 27<sup>th</sup> September, 2012,<sup>2</sup> passed by ACMM, to the extent that it directs revaluation of the smuggled goods.

2. In brief, the factual background leading to the present petition, is as follows:

2.1. On 4<sup>th</sup> June, 2009, Respondent No. 2, Harsh Vasant, and one

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<sup>1</sup> "DRI"



Moolchand Sharma, were arrested by officers of the DRI, Delhi Zonal Unit, for offences under Sections 132 and 135 of the Customs Act, 1962,<sup>3</sup> in relation to the smuggling of 5010 bottles of foreign liquor, allegedly concealed within a consignment of foodstuff and beverages, imported under Bill of Entry No. 795029 dated 26<sup>th</sup> May, 2009 at ICD, Tughlakabad, New Delhi. The arrested persons were produced before the Duty Magistrate on the same date and were remanded to judicial custody. Subsequently, they were granted bail subject to certain conditions.

2.2. Respondent No. 2 filed an application before ACMM, seeking revaluation of the goods. DRI filed a reply opposing the said request. However, by order dated 12<sup>th</sup> January, 2010, the application was allowed in following terms:

*“This is an application for seeking directions for the revaluation of the seized case property.*

*It is inter-alia stated in the application that a panchnama of the liquor allegedly imported by the applicant was prepared on 02.06.2009 and the value of the imported liquor is determined by DRI is excessive and arbitrary. DRI valued the liquor more-than rupees one crore at the time of remand of the petitioner Harsh Vasant. The said value was brought down by the DRI itself to Rs. 83,94,779/- during the hearing of bail application of the applicant. It is submitted by Mr. Gaur that under section 14 of the Customs Act the applicant has a right to seek revaluation of the seized goods. Reply to the application has been filed by the Directorate. It is submitted that application is not maintainable either in law or the fact and that the show cause notice has been already issued to the applicant for adjudication proceedings and the applicant is at liberty to raise all these points before the adjudicating authority.*

*The adjudication proceedings against the applicant are separate. It is not disputed that the case against the applicant is based upon the alleged recovery of the imported liquor from him without payment of duty. In the remand application the value of the goods was mentioned as Rs. 100,87,566/-. Thereafter in reply to bail application*

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<sup>2</sup> “Impugned order”

<sup>3</sup> “Customs Act”



*of the applicant the value was substantially reduced to Rs. 83,94,779/- The valuation of goods exceeding rupees one crore entail different punishment than the value being less than rupees one crore.*

*The proceedings before the Court are still pending as neither any closure report has been given by the department nor any complaint has been filed.*

*Apart from right of applicant section 14 of Customs Act and valuation rules, the value of the goods is a material consideration in all proceedings before the Court, be it the trial or the inquiry which may include the orders regarding the release of goods on superdari or otherwise. Hence it is very necessary that proper valuation of the goods must come on record.*

*Accordingly, application filed by Mr. Arsh Vasant is allowed. In the facts and circumstances. Additional Director General DRI Delhi Zone is directed to get the revaluation of the seized goods properly through an apraisor in terms of the international market value of the seized goods.*

*Copy of order be sent to Additional Director General DRI Delhi Zone for necessary compliance.”*

2.3. Aggrieved, the DRI filed CRL.M.C. 226/2010 before this Court. In parallel, civil adjudication proceedings culminated in the passing of an order dated 29<sup>th</sup> August, 2010 by the Commissioner.

2.4. In light of the aforesaid adjudication, the DRI understood that the issue of revaluation stood conclusively settled. Consequently, CRL.M.C. 226/2010 was not pursued further and was permitted to be withdrawn by order dated 18<sup>th</sup> August, 2011.

2.5. Separately, the DRI filed an application under Section 110(1B) of the Customs Act seeking certification of the seized goods. However, the ACMM dismissed the application by order dated 5<sup>th</sup> April, 2010, *inter alia* observing that the certification proceedings could not be conducted in the absence of the arrested individual.

2.6. The DRI assailed the said order by filing Revision Petition No. 312/2010, which was allowed by the Revisional Court *vide* order dated 2<sup>nd</sup>



June, 2010. The ACMM was directed to issue notice to the concerned person (Harsh Vasant) and to proceed with the certification proceedings expeditiously. The aforesaid order reads as follows:

*“This revision petition directed against the order dated 5<sup>th</sup> April, 2010 whereby the learned ACMM has dismissed the DRI’s application under Section 110 (1B) of the Customs Act moved for the purpose of getting certification of the Court in respect of the seized foreign liquor from ICD Tuglakabad.*

*As per the case of the DRI, the importer of the consignment of the seized foreign liquor was M/s Swaraj International. In connection with that seizure of foreign liquor one Harsh Vatan was arrested by the DRI who later on was released on bail by the Court. As required under Section 110 (1B) of the Customs Act the DRI moved an application before the ACMM for initiating certification proceedings in respect of the seized foreign liquor after issuing notice to the importer M/s Swaraj International. When the matter came up for consideration on 5<sup>th</sup> April, 2010, the learned ACMM observed that one individual person; had been arrested by the DRI who had been released on bail and therefore the certification proceedings could not be held in his absence. Observing so, learned ACMM dismissed the application of the petitioner under Section 110 (1B).*

*The grievance of the petitioner is that if the learned ACMM was of the view that the arrested person was required to be present in the certification proceedings then all that could be done was to issue notice of the proceedings to that person Harsh Vatan also but the application could not be dismissed.*

*I am in agreement with the submission of Mr. Satish Aggarwala. If the presence of Mr. Harsh Vatan considered to be necessary in the certification proceedings notice of the proceedings should have been issued to him instead of dismissing the application of the petitioner. This petition is accordingly allowed. The impugned order dated 5<sup>th</sup> April, 2010 is set aside. Learned ACMM shall now continue with the certification proceedings and issue notice to Mr. Harsh Vatan also and afresh date would be fixed for the proceeding.*

*The matter shall now be taken up by the learned ACMM on 5<sup>th</sup> June, 2010, at 2.00 p.m. and thereafter it shall proceed with the proceedings and conclude the same expeditiously.*

*A copy of this order be given dasti under the signature of Court, Master to counsel for the petitioner, as requested.”*

2.7. Subsequently, when the proceedings were revived, the application was transferred to another Court and on 08<sup>th</sup> February, 2011, Respondent



was given time to file a reply, which they filed on 14<sup>th</sup> May, 2011.

2.8. On 24<sup>th</sup> April, 2012, Respondent No. 2 filed an application seeking compliance of earlier order dated 12<sup>th</sup> January, 2010. In the meantime, the application filed by the DRI under Section 110 (1B) of Customs Act was adjourned for from time to time. Then, at the request of the Respondents, the concerned MM sent the file to the Court of ACMM for 17<sup>th</sup> August, 2012.

2.9. Eventually, by Impugned order 27<sup>th</sup> September, 2012, both the application of the DRI and Respondent No. 2 seeking compliance of order dated 12<sup>th</sup> January, 2010 were allowed. The parties were directed to appear before the Court of MM, New Delhi on 01<sup>st</sup> October, 2012 for conducting certification proceedings under Section 110 (1B) of Customs Act. Further, the Department was directed to revalue the goods through an appraiser in terms of the International Market value of the seized goods on such date as fixed by the court of MM.

2.10. On 04<sup>th</sup> October, 2012, the MM observed that in view of the direction for revaluation, the Court would need to be held at ICD, Tughlakabad where the seized goods were stored. The matter was accordingly adjourned for awaiting permission from the High Court. The order dated 04<sup>th</sup> October, 2012 reads as follows:

*“By order dated 27.09.2012 Ld ACMM has issued directions for carrying out certification of panchnama and also for revaluation of the goods. The court has to be held at ICD Tughlakabad as the goods are lying in- a container there. Ld SPP for the complainant submits that Permission in this regard is to be sought from the honourable High Court. As requested put up for 06.11.2012 awaiting for the permission. Main file i.e. CC No-188/1 pertaining to the matter may be sent back to the Ld ACMM for 05.10.2012. The other two miscellaneous applications be kept on 06.11.2012. Order be given dasti as requested.”*



2.11. It is in these circumstances that the present petition has been filed by the DRI, seeking (i) quashing of the direction permitting revaluation of the seized goods, and (ii) a direction to the learned MM to proceed strictly under Section 110(1B) of the Customs Act for certification of the panchnama, without embarking upon revaluation.

3. Mr. Satish Aggarwala, Senior Standing Counsel for the DRI, submits that the ACMM has fell into a grave error in directing revaluation of the goods. He submits that such a direction effectively amounts to conducting an investigation, a function beyond the remit of a Magistrate, particularly once the question of valuation stood adjudicated by a competent quasi-judicial authority after conclusion of investigation, issuance of show cause notice, and hearing of the parties.

4. Additionally, he emphasises that the ACMM committed grave error in directing revaluation of goods through Appraiser in terms of “International Market Value”. Attention, in this behalf, is invited to the Section 135 (1) (i) (A) of the Customs Act, 1962, which talks of “market price”. Attention is also invited to Section 2 (30) of the Customs Act, 1962 which defines market price as “*market price*”, in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;”

5. He further submits that the ACMM failed to appreciate that, at the time of passing the impugned order, the circumstances had materially changed. By then, the adjudication proceedings had culminated in Order No. 39/2010, which comprehensively determined the valuation issue. This crucial development, it is argued, was concealed by Respondent No. 2 when



filing the application dated 24<sup>th</sup> March, 2012,<sup>4</sup> thereby misleading the Court.

6. On the other hand, Mr. Ramakant Gaur, counsel appearing on behalf of Respondent No.2, opposes the Petition. He defends the impugned order and contends that no interference is warranted. He submits that the valuation originally recorded in the *panchnama*, approximately INR 1 crore, was subsequently scaled down by the DRI itself to INR 87 lakhs, during the bail proceedings, ostensibly due to revised rates applied by duty-free shops. Meanwhile, Respondent No. 2 had produced bills from a DSIDC outlet reflecting the market value of the seized goods as approximately INR 23 lakhs. The sharp downward revision of INR 13 lakhs within two days, it is urged, exposes the arbitrary and mechanical nature of the DRI's valuation exercise. Mr. Gaur further submits that the Respondents relied on data from the National Information Data Base (NIDB) which indicated the international transaction value of the seized liquor to be approximately INR 22.96 lakhs. It is contended that this data conclusively demonstrates that the DRI's valuation grossly inflated the real value of the goods and lacked any defensible basis in the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

7. As regards the Petitioner's contention that the valuation dispute stood settled by the adjudication order, Mr. Gaur submits that such an argument is fundamentally misconceived. He points out that the adjudication order neither re-evaluates the seized goods nor authenticates the original valuation made in the *panchnama*. The adjudicating authority's casual dismissal of the valuation issue, it is argued, leaves the core dispute unresolved. Furthermore, it is contended that the adjudication order itself records that

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<sup>4</sup> As noted in the impugned order



judicial proceedings and departmental adjudications are independent of each other, thereby leaving the door open for revaluation before the Court. On this premise, it is submitted that the DRI's withdrawal of its earlier petition before this Court, citing the adjudication as rendering it infructuous, amounts to little more than an unfair attempt to frustrate judicial scrutiny of the valuation.

8. As to the issue of jurisdiction, Mr. Gaur argues that the ACMM was well within his powers to pass the order in question. He places reliance on the principles enunciated by the Supreme Court in *Sakiri Vasu v. State of UP*;<sup>5</sup> *T.C. Thangaraj vs V. Engammal & Ors*;<sup>6</sup> *Directorate of Enforcement vs. Deepak Mahajan and another*.<sup>7</sup>

9. He further submits that the Doctrine of Implied Powers applies squarely to the present case. It is argued that the power to direct a revaluation is necessarily incidental to the Court's obligation to ensure that the evidentiary material placed before it is both authentic and reliable. Without such powers, the effective exercise of express statutory functions would be rendered meaningless.

10. The Court has carefully considered the contentions of the parties.

11. At the outset, it is necessary to address the preliminary objection raised by Respondent No. 2 regarding the maintainability of the present petition on the ground that the DRI had earlier withdrawn CRL.M.C. No. 226/2010. Upon a plain reading of the order dated 18<sup>th</sup> August, 2011, passed in the said proceedings, it is evident that the DRI had sought withdrawal of the earlier petition specifically on the footing that, in view of the

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<sup>5</sup> (2008)2 SCC 409

<sup>6</sup> (2011) 12 SCC 328



adjudication order having been passed, the necessity for revaluation no longer survived. The relevant extract of the withdrawal order dated 18<sup>th</sup> August, 2011, reads as under:

*“Learned counsel for the petitioner submits that the adjudication proceedings have since been concluded and he has filed the adjudication order, which is taken on record.*

*Learned counsel for the petitioner seeks permission to withdraw this petition in view of the adjudication order having been passed in relation to the goods seized in this matter and this petition having become infructuous.*

*Dismissed as withdrawn.”*

12. Notably, the Respondent No.2 was duly represented by counsel at that stage and did not dispute the basis on which the withdrawal was sought. The withdrawal was not unconditional; rather, it was predicated entirely upon the conclusion of the adjudication proceedings. It was on this understanding that the petition was permitted to be withdrawn without adjudication on merits.

13. However, despite this development, Respondent No. 2 thereafter filed a fresh application on 24<sup>th</sup> March, 2012, seeking compliance with the order dated 12<sup>th</sup> January, 2010 for revaluation. The said request was entertained and ultimately allowed by the ACMM *vide* the impugned order. In these circumstances, the DRI cannot be estopped from challenging the fresh direction for revaluation, which effectively revives a controversy that the DRI had considered concluded. Accordingly, the Court finds no merit in the objection raised to the maintainability of the present petition.

14. Turning now to the substantive question, whether the ACMM, by the impugned order, was justified in directing revaluation of the seized goods, it is necessary to consider the reasoning adopted. On this issue, it would be apposite to take note of the reasoning given in the impugned order, which

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<sup>7</sup> (1994) 3 SCC 440



reads as follows:

*“By present order I will dispose off two applications. An application U/s 110 (1- B) of the Customs Act filed on behalf of DRI and another application dated 24.03.2012 filed on behalf of applicant/ accused seeking compliance of orders dated 12.01.2010.*

*It has been contended on behalf of the complainant that the DRI seized the foreign liquor of applicant/ accused Harsh Vasant and under the provisions of Section 110 (1-B) the panchnama in respect of seizure of goods has to be certified by a Magistrate for purpose of certifying the correctness of the inventory of the seized goods, therefore, the orders may be passed under the above noted sections for certifying the correctness of the inventory.*

*On the other hand, the applicant/ accused has submitted that vide orders dated 12.01.2010. the complainant was directed to revalue the seized goods and till today the complainant has not complied with the orders and without the revaluation of the goods the certification of the seized goods cannot be allowed to be done. It has been further submitted that against the orders dated 12.01.2010, the complainant had preferred a Crl. M.C. No. 226/2010 before Hon'ble High Court of Delhi which was later on withdrawn by the complainant as such, the orders dated 12.01.2010 have attained finality and thus the complainant department is bound to revalue the goods and file the appropriate valuation before this Court.*

*I have heard the Ld. Counsels for the parties and have also gone through record.*

*Under the relevant provisions of the law, the certification of panchnama is required to be carried out and there can be no reason to further delay the certification process. However, it is evident from the record that at the stage of the remand, the DRI valued the goods at more than one crore and at the time of granting of the bail, the value was brought down by the DRI to Rs. 83,94,779/- and this anomaly in the valuation of the goods necessitated the Court to pass an order for re-valuation of the seized goods through an appraiser. To say the least, under the law the valuation of goods exceeding Rs. 1 Crore entail different punishment than the value being less than a crore rupees.*

*In my considered opinion, once the orders directing the complainant to revalue the goods have been passed and the revision against the said order stands dismissed then the complainant department has to revalue the goods.*

*Thus, both the applications in consideration are entitled to be allowed. Let the file be placed before the Court of Sh. Sudesh Kumar, Ld. MM, New Delhi to carry out the certification proceedings as envisaged U/s 110 (1-B) of the Customs Act and on the date fixed by*



*Ld. MM for certification proceedings the department shall revalue the goods through an appraiser in terms of International Market Value of the seized goods.*

*The parties shall appear before the Court of Sh. Sudesh Kumar, Ld. MM, New Delhi on 01.10.2012 at 2pm.”*

15. A perusal of the impugned order reveals that the ACMM’s direction for revaluation rests substantially on the perceived discrepancy in the valuation figures furnished by the DRI. The Court notes that the valuation initially indicated by the DRI at the time of remand exceeded INR 1 crore, whereas during the hearing of the bail application, the value was subsequently revised to approximately INR 83,94,779/-. Observing this reduction, the ACMM formed the view that such an “anomaly” warranted a fresh valuation exercise through an appraiser to ascertain the true international market value of the seized goods. It must be noted that the ACMM appeared to have been influenced by the proposition that a valuation of the goods exceeding INR 1 crore would attract different penal consequences under the Customs Act, than if the value were below the said threshold.

16. During the hearing before this Court, a query was posed to Mr. Satish Aggarwala, Senior Standing Counsel for DRI, regarding the background of the apparent discrepancy in valuation. Mr. Aggarwala explained that at the initial stage, at the time of seizure, the DRI had assessed the value of the goods based on preliminary market inputs. Subsequently, when the official price list of imported liquor at Alpha Duty Free Shop at IGI Airport was obtained from the Assistant Commissioner of Customs, the valuation was recalibrated more precisely at INR 83,94,779/-. It was further clarified that this figure represented the value exclusive of customs duties and incidental



charges, and if those components were added, the valuation would still comfortably exceed INR 1 crore. On this aspect, the DRI's contemporaneous written submissions in opposition to the bail application are also significant, wherein it was specifically recorded that the gross value of goods — inclusive of duty, remained above the statutory threshold. A copy of the said written submissions is handed over across the board and taken on record. The relevant portion is extracted hereinbelow:

*“As regards the value, the panchnama and annexure are duly signed by the representative of the applicant. The value is on the basis of documents. The documents filed by the applicant cannot be looked into at this stage. Where is the guarantee that the documents/receipts pertain to same goods. Presumption of correctness of official act is in favour of the department. A copy of letter dated 11.06.2009 of Air Customs with annexure is attached. According to this, the value is Rs. 83,94,779/- of the seized goods at the duty free shop at IGI Airport, New Delhi. **Obviously this does not include customs duty and other misc. expenses. Even if we go by this value, the duty evaded will come to more than 1 crore.**”*

(Emphasis Supplied)

17. In this backdrop, it becomes evident that the so-called ‘anomaly’ in valuation, which weighed with the ACMM, had a reasonable explanation. The differential arose not from arbitrariness but from the natural progression of the investigation, from an initial estimate based on immediate inputs, to a subsequent refinement on receipt of official pricing data. Unfortunately, this critical aspect was neither brought into focus nor appreciated in the impugned order.

18. Further, it cannot be overlooked that valuation of the seized goods had already been subjected to adjudication in the proceedings initiated under the Customs Act. By order dated 29<sup>th</sup> August, 2010, passed after issuance of a show cause notice and consideration of the defence raised by Respondent



No. 2, the adjudicating authority confirmed the valuation at a figure exceeding INR 1 crore. Although it is correct, as Respondent No. 2 contends, that criminal proceedings and adjudication proceedings operate in distinct spheres and follow different standards of proof, the fact remains that the adjudication proceedings have been concluded, and the valuation specified in the show cause notice has been confirmed, thereby *prima facie* suggesting that it was made in accordance with the law. In such circumstances, the necessity for an independent revaluation exercise was not warranted.

19. It is also pertinent to note that the directions for revaluation were issued in the criminal proceedings at a stage when no complaint had yet been filed by the DRI and the investigation was still underway. In the absence of any specific power conferred either under the Customs Act or the Code of Criminal Procedure to order revaluation during investigation, and particularly after the conclusion of quasi-judicial adjudication on the same subject, the Magistrate, in the opinion of this Court, exceeded the permissible limits of jurisdiction.

20. It may be added that Section 110(1B) of the Customs Act empowers a Magistrate to certify the inventory and the description of the goods seized, thereby facilitating evidentiary purposes at trial. However, this provision cannot be stretched to confer upon the Magistrate the authority to order a fresh revaluation of goods at the preliminary stage.

21. For all the aforesaid reasons, the Court is of the view that the impugned direction for revaluation of the goods is unsustainable in law.

22. Accordingly, the present petition is allowed. The direction for revaluation of the goods, as contained in the impugned order dated 27<sup>th</sup>



September, 2012, is hereby set aside. Insofar as the certification proceedings under Section 110(1B) of the Customs Act are concerned, if the same have not yet been concluded, the Court directs that they shall now be conducted expeditiously and preferably completed within a period of three months from today.

23. Disposed of, along with pending application.

**SANJEEV NARULA, J**

**MAY 13, 2025**

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