

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

RESERVED ON: 27.08.2012
PRONOUNCED ON: 04.09.2012

+ **WP (C) 2952/2012, CM NOs.6364/2012,
8854/2012 & 9968/2012**

JATIN AHUJA Petitioner
Through: Mr. Pradeep Jain with
Mr. P.A. Augustian and Mr. Sumit,
Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Rajeeve Mehra, ASG with
Mr. Satish Aggarwala and Mr. Ashish
Virmani, Advocates for UOI.
Mr. V.C. Jha, Advocate for R-2 & R-3.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT

% 1. In this writ petition, the petitioner impugns the Panchnama dated 09.05.2012 through which Respondent No. 5, the Directorate of Revenue Intelligence (DRI) carried out re-seizure of Maerati Quattroporte 4.2 Automatic car (“the Maserati car”) and revocation of *supurdarinama* dated 26.4.2011.

2. The facts necessary in disposing of this writ petition are that the petitioner is engaged in the business of trading in imported brand new and domestically purchased second hand luxury cars, through M/s. Big Boyz Toyz Pvt. Ltd. of which he is a director. The petitioner claims that on 07-12-2010 it imported a brand new Maserati car. The fifth Respondent, by *Panchnama* dated 26.04.2011, in exercise of powers under Section 110 of the Customs Act, 1962 (the Act) detained, *inter alia*, the Maserati car under and on the same day, handed it over to petitioner vide *supurdarinama* (or *supradginama*). Thereafter, by order dated 24.10.2011 the Commissioner of Customs (CC) extended the period for issuance of show cause notice for a further period of 6 months w.e.f. 25.10.2011 under Section 110(2) of the Act. On 09.05.2012, the fifth respondent, by *panchnama* cancelled the *supurdarinama* and took possession of the Maserati car. The petitioner seeks direction for quashing of the *panchnama* dated 09.05.2012 and consequent order releasing the Maserati car.

3. In support of the claim, learned counsel Shri. Pradeep Jain for the petitioner urged that upon expiry of the period of one year from the seizure of the Maserati car, it was entitled to an unconditional release of the same. He pointed that this one year period expired on 25.4.2012. He placed reliance on *J.K. Bardolia Mills v Dy. Collector and Ors* 1994 (5) SCC 332 and *Harbans Lal v. Collector of Central Excise & Customs* 1993 (67) ELT 20 (SC).

4. The learned ASG appearing for the fifth respondent defended the *panchnama* dated 9.5.2012 and contended that the car was released pursuant to a request made by the petitioner under Section 110-A of the Act. This order was made before expiry of the overall period of one year contemplated under Section 110 (2) and the extended period of six months, available for issuance of the show cause notice. The petitioner, it is submitted, consciously sought for release of the seized car, - a request that was granted subject to fulfillment of conditions, provisionally, pending issuance of show cause notice and adjudication in respect of duty liability. Such being the case, there was no question of the seizure having lapsed by operation of Section 110 (2).

5. The revenue relied on the judgment reported as *Jayant Hansraj Shah v Union of India* 2009 (1) Bom CR 474 to say that whenever the power to issue show cause notice is preserved, and a request is made, to release the goods taken into custody, there would be no question of unconditional release, by operation of Section 110(2) of the Act.

6. This court has considered the arguments of the parties. The relevant provisions of the Customs Act, 1962 read as:

“110. Seizure of goods, documents and things: (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(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:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which in his opinion will be useful for, or relevant to, any proceedings under this Act.

(4) The person from whose custody any documents are seized under Sub-section (3) shall be enabled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Section 110-A 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 proper form with such security and conditions as the adjudicating authority may require.

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124. Issue of show cause notice before confiscation of goods etc. - No order confiscating any goods or imposing

any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing 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:

Provided that 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."

This court notes that the only question which arises, for determination, in this Petition is whether after expiry of the period of one year, the seizure of the goods or articles would be deemed to lapse under Section 110, and whether the position would be the same, if a request for provisional or conditional release, under Section 110-A is acceded to before the expiry of the period of one year under Section 110. No other arguments were addressed by either party, in respect of any other issue.

7. The Supreme Court in [*The Asstt. Collector of Customs and Ors. v. Charan Das Malhotra*](#) AIR 1972 SC 689 considered the interplay between Sections 110 and 124 of the Customs Act and held as follows:

“Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. The Section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice.”

The Supreme Court in *J.K. Bardolia Mills v Dy. Collector and Ors.* 1994 (5) SCC 332 followed its previous decision, and held that:

“When the goods are seized under Section [110\(1\)](#) of the Act that amounts to seizure of the goods under the Act and one of the conditions for invoking the provisions of Section [123](#) of the Act are satisfied by the mere factum of seizure. The effect of non-compliance of the provisions of Section [110\(2\)](#) would only be that the seized goods are returned to the person from whose possession they were seized.”

8. The above view was followed by this Court in *Krampe Hydraulik (India) v Union of India and Ors.* 2003 (71) DRJ 353 where it was held as follows:

“From a plain reading of the aforesaid provisions it is clear that section 124 requires that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Thereafter, an opportunity of making a representation in writing within such reasonable time is to be granted and a reasonable opportunity of being

heard is also to be provided. However, this Section does not in any manner prescribe any time frame as to when the notice in writing is to be issued. In other words, there is no time limit prescribed for the issuance of such a notice as contemplated under section 124 (a) of the said Act. Now, looking at the provisions of Section 110(2), it is apparent that it relates only to the question of seizure of the goods. It clearly stipulates that if after the goods are seized under the provisions of Section 110 (1) of the said Act 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 are to be returned to the person from whose possession they were seized. The effect of not giving a notice within six months of the date of seizure is that the seized goods are liable to be returned forthwith to the person from whose possession they were seized. This is the total effect of the provision of Section 110(2) with regard to the non-issuance of a notice under Section 124(a) within six months of the date of seizure of the goods. I am in agreement with the submission of the learned counsel for the respondent that the only effect of any non-service of a show cause notice within the stipulated period of six months would be that the seized goods would be liable to be returned forthwith to the person from whose possession they were seized.

7.3. In the present case, this would imply that the said goods which were seized on 3.11.1976 became liable to be returned on the expiry of six months there from as no show cause notice had been issued till then.”

9. It can be gathered from the above discussion that the provision of Section 110 (2) in so far as the prescription of a time limit for holding seized goods, is deemed mandatory; the consequence of not issuing a show cause notice within the period or extended period specified is clearly spelt out to be that the

“goods shall be returned to the person from whose possession they were seized” (apparent from a combined reading of Section 110 (2) and its proviso). The corollary is not that the Customs authorities lose jurisdiction to issue show cause notice.

10. Now, such being the case, the question is if the customs authorities accede to a request to release the goods, under Section 110-A, would such event absolve or override the operation of Section 110 (2). It is to assert such a proposition that the respondents rely on the judgment of the Bombay High Court in *Jayant Hansraj Shah*. There, the request for release had been made within the period; however, the extended period of six months had not expired. The Court, in that context, ruled that:

“9. Under Section 110-A there is a power to provisionally release the seized goods pending order of adjudication on taking a bond in a proper form with security and conditions as the Commissioner of Customs may require. It is, therefore, clear that from the date of seizure till the order of adjudication the Commissioner of Customs has the power to release the goods provisionally. This power was exercised. The petitioner accepted this order of provisional release but wanted variation of the said order which he was informed could not be done.

10. Section 110 speaks of no notice being given under Clause (a) of Section 124 within six months of the seizure or confiscation of the goods. The procedure for confiscation of the goods can be resorted to if the goods are not provisionally released. If the owner in terms of Section 110-A applies for provisional release and an order is passed it can be said that the goods continue to be under seizure as the order under Section 110-A is a

quasi judicial order. Section 110(2) would not be operative. It is only in the case where no pro-visional order is passed for release of the seized goods and if no notice is issued under Section 124(a) for confiscation of the goods then only would Section 110(2) apply and the respondent would be bound to release the goods.

Any other reading of the section would mean that a person whose goods are seized would seek a provisional release of the goods, get an order of provisional release, allow the authorities to proceed to believe on that basis that such person seeks to release the goods provisionally and on the expiry of the period of six months if notice is not issued under section 124(a) then contend that the terms for provisional release of the goods are no longer binding as the period of six months has expired and no notice has been served. The period of notice is only when the respondents seek to confiscate the goods. If there be a provisional release order it is not within the jurisdiction of the respondents to proceed to issue the notice under Section 124. At the highest they can proceed under Section 110(1A) by following the procedure set out therein. In our opinion, therefore, as procedure for confiscation could not have been initiated pursuant to the order of provisional release the contention urged by the petitioners that the goods should be released under Section 124 has to be rejected.”

11. From the above judgments, the position of law on the issue of effect of expiry of one year period (six months, if no extension is granted) after the seizure of goods etc under Section 110 of the Act when there has been no show cause notice under sub-clause (2) is amply clear. Upon expiry of the one year period (or six months, as the case may be) the goods are returnable to the person from whose possession they were seized. The Bombay view, expressed

in *Jayant Hansraj Shah* cannot be divorced from its context, and any effort to say that release under Section 110A would extinguish the operation of the consequence (of not issuing show cause notice, within the statutory period) spelt out in Section 110 (2) would be contrary to the plain meaning and intendment of the statute. This is because Section 110-A is by way of an interim order, enabling release of goods, (for instance, where they are fast moving, or perishable). The existence of such power does not in any way impede or limit the operation of the mandatory provision of Section 110 (2), particularly the time limit for issuance of show cause notice, in so far as it relates to the consequence of statutory dissolution of the seizure. There are no internal indications in Section 110-A that the amplitude of Section 110 (2) is curtailed, or the effect of the consequence (of transgressing the time limit, i.e statutory lifting of the seizure) being overborne, by use of devices such as a non-obstante clause or words such as “*Nothing in Sub-section (2) of Section 110 shall operate in the case where an order is made under this Section*”).

12. It is well settled that when a provision of law enjoins the performance of any act, and further mandates, the consequences for non-performance, the condition is mandatory. This was spelt out in the clearest terms by the Supreme Court in *Baru Ram v Parsanni* AIR 1959 SC 93:

“Whenever a statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it

would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence”

[See *Maqbool Ahmad v Onkar Pratap Narain Singh* AIR 1935 PC 85, *Jagan Nath v Jaswant Singh* AIR 1954 SC 210, *Manilal Mohanlal Shah v Sardar Sayed Ahmed Sayed Mahmud* AIR 1954 SC 349; *M.I Builders v Radhey Shyam Sahu* 1999 (6) SCC 464]. Thus, the effect of the statute, by virtue of Section 110 (2), is that on expiration of the total period of one year (in the absence of a show cause notice) the seizure ceases, and the goods which are the subject matter of seizure, are to be released unconditionally. There is nothing in Section 110-A to detract from this consequence. The public interest in injecting a sense of efficiency by mandating an outer limit to seizure orders, whenever the customs authorities contemplate an adjudication proceeding, is self-evident. But for the prescription of such an outer limit, Customs authorities would be entitled to claim and keep all manner of goods and valuables indefinitely, without any semblance of adjudication or even the preliminary step towards adjudication in the form of a show cause notice. In the case of goods with limited shelf life, or “fast moving” electronic articles, or even garments, which reflect the latest trends, even such limited seizure may result virtually in a confiscation, because they may be rendered worthless upon release.

13. In the light of the above discussion, the Petition has to succeed. It is declared that the effect of non issuance of show cause notice under Section 124 in this case, has resulted in the operation

of Section 110(2) and the statutory dissolution of the seizure order made in the case of the Petitioner's car. The said vehicle – released provisionally and subject to conditions under Section 110-A – shall be deemed to have been unconditionally released. If the Maserati car has not been released, the same shall be released within two weeks and the *superdarinama* is hereby quashed. The writ petition is allowed in the above terms; no costs.

**S. RAVINDRA BHAT
(JUDGE)**

**R.V. EASWAR
(JUDGE)**

SEPTEMBER 4, 2012