

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 766 of 2023

1. **Muhammad Ali**, aged 48 years, S/o Alavi, Srambikkal House, Arakkuparambu Road, Vettathur, Malappuram, Kerala – 679326.
2. Muhammed Shafi K.P., aged 49 years, S/o Moideen K.P., Kalathumpadiyan House, Atteerippara, Arakkuparambu P.O. Malappuram, Kerala – 679322.
3. Abdul Shukoor, aged 49 years, S/o Pareekutty, Vadakku Veettil, Iyyad, Unnikulam, Sivapuram, Kozhikode, Kerala 673574.
4. Muhammed Yasir Yoosaf, aged 49 years, Valiya Peedikakkal, Arakkaparambu, Malappuram, Arkkuparamba, Kerala – 679322.
5. Seenath Fousiya V., aged 35 years, D/o Muhammed Sha V., Vattamkandathil House, Chalavara, Palakkad, Kerala – 679505.

... Petitioners

-Versus-

1. Union of India, represented by Secretary, Ministry of Finance, North Block, New Delhi – 110001.
2. Chairman, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, New Delhi – 110001.
3. Commissioner of Customs (Preventive), North Eastern Region, 110 M.G. Road, Shillong, Meghalaya – 793001 through its Branch Office at Sangakpham, Imphal East, Manipur.
4. Superintendent of Customs, Customs Preventive Commissionerate, North Eastern Region, 110 M.G. Road, Shillong, Meghalaya – 793001 through its Branch Office at Sangakpham, Imphal East, Manipur.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioners :: Mr. Haaris Moosa, Advocate
For the respondents :: Mr. N. Brojendro, Advocate
Date of hearing :: **06-06-2024**
Date of judgment & order :: **23-07-2024**

JUDGMENT & ORDER

[1] Heard Mr. Haaris Moosa, learned counsel appearing for the petitioners and Mr. N. Brojendro, learned counsel appearing for the respondents.

The present writ petition has been filed with the prayer for issuing a writ of Mandamus directing the officers of the respondent No. 2 to return forthwith the gold jewellerys seized from the petitioners as provided under section 110(2) of the Customs Act, 1962.

[2] The facts of the present case are not in dispute. On 23-02-2023, the petitioners No. 1, 2 and 4 were travelling to Guwahati and the petitioners No. 3 and 5 were travelling to Delhi and during the pre-embarkation security check at the domestic terminal of Imphal International Airport, nine items of jewellery were seized from them by the CISF personnel posted there and thereafter, handed over to the Anti-Smuggling Unit, Customs Division, Imphal, which seized the said jewellery items as empowered under section 110 of the Customs Act, 1962. The particulars and details of the seized items are as under:-

[3]

Petnr.	Name	Seized items
1	Mohammad Ali S/o Alavi	One gold bangle weighing 245 gm. coated with silver colour coating.
2	Muhammed Shafi K.P. S/o Moideen K.P.	One gold bangle coated with silver colour coating weighing 179 gms.
3	Abdul Shukoor S/o Pockerkutty	One gold bangle with silver colour coating weighing 213 gms.
4	Mohammed Yasir S/o Yoosaf	One gold bangle with silver colour coating weighing 197 gms.
5	Seenath Fousiya V. S/o Mohammed Sha V.	Two silver colour coating gold chains, one silver colour coating gold ring and two gold bangles (uncoated) totally weighing 485.13 gms.

[3] Based on the said seizure dated 23-02-2023, a Show Cause Notice, as provided under section 124 of the Customs Act, 1962, dated 17-08-2023 was issued by the Addl. Commissioner of Customs and the same was dispatched on 25-08-2023 through speed post for delivery to the present petitioners.

Upon realising that the Show Cause Notice was not issued within the statutory period of six months as provided under section 110(2) of the Customs Act, the petitioners submitted a representation dated 26-09-2023 to the Chairman, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance and the Commissioner of Customs (Preventive), North Eastern Region, requesting for releasing the seized gold jewellerys. As the authorities have failed to release the said seized gold jewellerys despite the request made by the petitioners, the petitioners approached this court by filing the present writ petition for redressing their grievances.

[4] The learned counsel for the petitioners submitted that section 110(1) of the Customs Act, 1962 confers power and jurisdiction on the proper Officer of Customs to seize any goods with respect to which he has a reasonable belief that the goods are liable for confiscation under the Act. It has also been submitted that under sub-section (2) of section 110, it is provided that where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 of the Act within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized and that any further retention of the seized goods will be rendered illegal as being ultra vires of the provisions of section 110(2) of the Customs Act.

The learned counsel further submitted that the petitioners have approached the concerned authorities many times with a request to release/ return the seized gold jewellery. However, all such request and the representation unfortunately fell on deaf ears and the seized gold jewellery are still in the illegal custody of the respondents. It has also been submitted that the respondents are duty bound to release the seized jewellery to the petitioners as mandated by section 110(2) of the Customs Act, 1962 and that non-release of the said gold jewellery to the petitioners amounts to abuse of power and jurisdiction conferred on the respondents under the Act.

It has further been submitted on behalf of the petitioners that the refusal to release the seized gold jewellery as provided under section 110(2) of the Customs Act, 1962, is per se illegal and unsustainable and

such act grossly violates the petitioners' Fundamental Right to Equality as guaranteed under Article 14 of the Constitution of India. The learned counsel, accordingly, submitted that appropriate direction be issued to the respondents to return forthwith the seized gold jewellery to the petitioners.

[5] Mr.N. Brojendro, learned counsel appearing for the respondents submitted that as per the prevailing office procedure, the Show Cause Notice (SCN) was drafted by the seizing unit, i.e., Divisional Preventive Unit, Imphal and the same was sent through e-office electronically for approval by the competent authority at Customs (P), NER, Shillong. In view of the monetary amount involved in the case, the SCN was required to be signed by the Additional Commissioner of Customs sitting at Shillong and after approval of the same, the SCN was signed by the Additional Commissioner on 17-08-2023. The approved and signed SCN was then sent through e-office to the seizing unit at Customs Division, Imphal for DIN generation and issued of the SCN. It has been also submitted that there were some technical glitches while generating DIN due to limited internet connectivity and frequent disruptions and as such, DIN can be generated only in the evening of 21-08-2023 at Imphal Customs Office and that during the said period, the movement of files through e-office was not smooth as well. It has further been submitted that due to the then prevailing crisis wherein sporadic firings between the two warring communities that took place in Imphal city and its periphery, the District Magistrate imposed strict curfew against movement of the public and therefore, the SCN was registered only on 25-08-2023 through speed post for delivery to the concerned noticees, hence there was no delay in issuance of the SCN.

[6]

[6] It has been submitted on behalf of the respondents that if the competent authority passed an order for confiscation/ penalty, etc., the aggrieved party has an option to prefer an appeal to the appellate authority as provided under section 128 of the Customs Act, 1962. Thereafter, another appellate forum is also provided in the Appellate Tribunal under section 129 of the Act against the order passed by the First Appellate Authority. It has also been submitted that as the petitioners filed the present writ petition without resorting to the provisions of section 128 and 129 of the Customs Act providing for filing a statutory appeal, the present writ petition is not maintainable and is liable to be rejected.

[7] I have heard the learned counsel appearing for the parties at length and considered their rival submissions. The only issue that arose for consideration in the present writ petition is whether the Show Cause Notice was issued within the period of time prescribed under section 110(2) of the Customs Act, 1962 and what will be the consequence if the SCN was not issued within the limited period prescribed under the aforesaid Act?

[8] Section 110(1) of the Customs Act, 1962 empowers a proper officer of the Customs to seize any goods if he has reason to believe that any such goods are liable to confiscation under the Act. Under section 110(2) of the said Act, it is, inter alia, provided that 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.

Section 124 provides, inter alia, 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 –

- (a) is given a notice in writing with the prior approval of the officer of Customs, not below the rank of an Assistant Commissioner of Customs informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.

Section 153 of the Act provides modes for service of notice. Under Section 153(1) of the Act, it is, inter alia, provided that an order, decision, summons, notice or any other communication under the Act or the rules made thereunder may be served in any of the following modes, namely –

- (a) ***
- (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorized representative, if any, at his last known place of business or residence.

Section 153(2) provides that every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided under sub-section (1).

[9] A conjoint reading of the provisions of section 110, 124 and 153 of the Customs Act, 1962 makes it very clear that if any goods are seized under section 110(1) of the Act, a notice as provided under section 124 of

the Act is required to be given to the owner of the goods before passing any order confiscating the goods or imposing any penalty and section 110(2) mandates that such notice under section 124(a) should be given within six months of the seizure and that on failure of giving such notice within the prescribed period, the seized goods shall be returned to the person from whose possession they were seized. Section 153 of the Act provides the mode of service of notice.

[10] In the present case, it is an admitted fact that gold jewelleryes were seized from the petitioners on 23-02-2024 and the Show Cause Notice under section 124 of the Customs Act was dispatched only on 25-08-2023 through speed post for delivery to the petitioners. If the period of six months as provided under section 110(2) of the Act is to be reckoned from 23-02-2023, the period of six months will lapsed on 22/23-08-2023. In view of the above, this court has no hesitation to hold that the Show Cause Notice dated 17-08-2023 was not given within the period of six months prescribed under section 110(2) of the Customs Act, 1962 and consequently, this court is of the considered view that the retention of the seized gold jewelleryes by the Customs officials is illegal as being violative of the provisions of section 110(2) of the Customs Act.

[11] So far as the objection raised by the learned counsel appearing for the respondents regarding maintainability of the present writ petition on ground of availability of filing a statutory appeal under the Act is concerned, since no order has been passed by the authority for confiscating the seized gold jewelleryes or imposing any penalty thereof, there is no necessity or

requirement of filing any appeal. Accordingly, this court held that the objection raised by the learned counsel appearing for the respondents is misconceived and not tenable.

In the result, the present writ petition is allowed by directing the respondents to release forthwith the seized gold jewellery to the concerned petitioners. With the aforesaid direction, the present writ petition is disposed of without any order as to costs.

JUDGE

FR / NFR

Devananda