

Serial No. 08
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 353 of 2023

Date of Decision: 05.04.2024

Shri. Bikash Soni,
S/o Saraban Kumar,
R/o Plot No. 874, Tikkadmal Ka Rasta,
Kishanpole Bazar, Jaipur, Rajasthan

:::Petitioner

-Vs-

1.The Union of India
Through Ministry of Finance
Department of Revenue, M.G. Road
Shillong, Meghalaya, 793001

2.Commissioner of Customs
Office of Commissioner of Customs(Preventive),
Customs House, 110 MG Road,
Shillong, Meghalaya

3.Office of the Commissioner of Customs
A/S Unit, Imphal, Manipur

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. D.S. Chadha, Adv. with
Mr. B. Deb, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner from whose possession a gold bangle was seized under the Customs Act, while travelling from Imphal to Delhi, is before this Court with a prayer for directions to issue to release/return the gold bangle to the petitioner under the provisions of Section 110(2) read with Section 124 of the Customs Act, 1962.

2. Mr. D.S. Chadha, learned counsel for the petitioner has submitted that after the seizure of the gold bangle on 04.04.2023, and after registration of the case, a show cause notice dated 03.10.2023, was issued and was

received by the petitioner on 10.10.2023, which was after a period of 6(six) months, from the date of the seizure. The learned counsel has submitted that as per Section 110(2) of the Customs Act, where any goods are seized under sub-section (1), and no notice in respect thereof is given under clause(a) of Section 124, within 6(six) months of the seizure of the goods, the goods shall be returned to the person from whose possession they are seized. The learned counsel has also referred to Section 124, whereby reasonable opportunity of being heard is to be allowed to the concerned persons. He then contends that, as the show cause notice was received by the petitioner only on 10.10.2023, after a period of 6(six) months, on being dispatched by the respondents via speed post on 05.10.2023, which was after the period of 6(six) months, the respondents therefore, in view of the violation of Section 110(2) and 124 of the Customs Act, are liable to return the gold bangle to the petitioner.

3. In support of his case, the learned counsel has placed reliance on a judgment of the Delhi High Court in the case of ***Purushottam Jajodia vs. Dir. of Revenue Intelligence, New Delhi*** reported in ***2014 (307) E.L.T. 837 (Del.)***, wherein he submits, it has been held that goods which had been seized under Section 110(1) of the Act, cannot be retained beyond the stipulated period of 6(six) months or the extended period of further 6(six) months, if no notice in respect of the goods is given under Section 124(a) of

the said Act, within the said period. He further submits that this judgment has also been upheld by the Hon'ble Supreme Court by an order dated 11.05.2015, passed in Civil Appeal No. 3122 of 2015 and 3123 of 2015 (*Dir. of Revenue Intelligence, New Delhi vs. Purushottam Jajodia*).

4. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondents has submitted that the show cause notice was issued on 03.10.2023, as per the proviso to Section 124 of the Customs Act, but however, due to the imposition of strict curfew by local Civil Society Organizations (CSO's) and District Magistrates within Imphal and the adjoining areas arising out of the on-going communal conflict, which erupted since 03.05.2022, the show cause notice could not be sent to the noticee by post on 03.10.2023, and the same was sent by speed post only on 05.10.2023, when the curfew was relaxed by the administration. He has further submitted that, in the cases of *Asstt. Collector of Customs vs. Charan Das Malhotra* reported in (1971) 1 SCC 697 and *Harbans Lal vs. Collector of Central Excise and Customs* reported in (1993) 3 SCC 656, it has been held that the period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice, and that Section 124 the proceeding survives even though, the seized goods might have to be returned or stand returned, in terms of Section 110 of the Act, after the expiry of the permissible period of seizure. He lastly submits that, the

respondents being prevented by sufficient cause in not issuing a show cause notice within the stipulated period due to reasons beyond their control, the same may be viewed leniently by this Court, as an important fact that cannot be ignored is that, the petitioner was not in possession of any licit documents to show that, he was in lawful possession of the said gold bangle.

5. Having heard the learned counsel for the parties, and as the question involved is only with regard to the observance of the provisions of the Customs Act namely Sections 110 and 124, with regard to seizure and issuance of show cause notice, the relevant extract thereof, are reproduced herein below for easy reference.

“110. Seizure of goods, documents and things.—(1)

(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 Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

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 1[writing with the prior approval of the officer of Customs not below the rank of 2[an Assistant Commissioner of Customs], 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.

[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]”

6. A perusal of the above noted sections clearly reflects that, Section 110(2) mandates that if a notice is not given under Section 124(a), within 6(six) months of the seizure, the goods shall be returned to the person from whom the possession they were seized. The proviso to Section 110(2), has however provided that the mandatory period may be extended for a further period not exceeding 6(six) months, and for the person from whom the goods were seized to be informed before the expiry of the extended period. In the instant case, it is not disputed that the seizure was made on 04.04.2023, which meant that the notice should have been issued prior to 03.10.2023, which however, was not the case, as the show cause notice was

sent by speed post on 05.10.2023, after the mandatory period as per Section 110(2) had lapsed. The proviso allowing for extension of time was also not resorted to by the respondents. Section 124 as can be seen from above, prohibits the confiscation of any goods or imposing any penalty unless the owner of the goods or such person is given a notice and an opportunity of making a representation and also of being heard. The issuance of a show cause on time therefore, being fundamental in such matters, and the same having not been complied with by the respondents, is thus hit by Section 110(2) of the Act.

7. Though spirited submissions have been made to attribute the delay due to the disturbances in Manipur, this Court has noted that the show cause notice was not issued from the office of the respondents in Imphal, Manipur, but from the office of the **Commissioner of Customs (Preventive) North Eastern Region, Shillong, Meghalaya**. The excuse as offered by the respondents to justify the delay therefore falls flat, and this Court is constrained to observe and deprecate the callous attitude of the respondents, not only in the proceedings to do with the seizure and issuance of the show cause notice, but also in the preparation of the affidavit, which amounts to misleading the Court.

8. The relevance of the judgment *Purushottam Jajodia vs. Dir. of Revenue Intelligence, New Delhi(supra)*, cited by the petitioner is noted, as

it essentially covers the case with regard to the sanctity of the 6(six) month period of show cause, and as such, no further discussion is required on the same. As far as the judgments cited by the learned DSGI are concerned, it is noted that as held therein, Sections 110 and 124 are independent of each other, and under Section 110, even though the seized goods might have to be returned or stand returned, the proceedings survive under Section 124.

9. Accordingly, for the reasons aforementioned, the writ petition is allowed and the respondents are directed to release the gold bangle seized from the petitioner forthwith.

10. Writ petition is disposed of however, with no order as to costs.

Judge

Meghalaya
05.04.2024
"D.Thabah-PS"