

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

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Date of decision: 23rd April, 2015

+ LPA No. 52/2015, CM No.1832/2015 (for stay) and CM No.1834/2015 (for filing addl. documents).

M/S JOHNSON WATCH COMPANY PVT. LTD Appellant

Through: Mr. Bishwajit Bhattacharyya, Sr.
Adv. with Mr. Abhijit Bhattacharyya
and Mr. Chandrachur Bhattacharyya,
Advs.

Versus

DIRECTORATE OF REVENUE INTELLIGENCE ..Respondent

Through: Mr. S.K. Dubey with Mr. Rajmangal
Kumar, Ms. Sushma Yadav and Mr.
Vikram Singh, Advs.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. On 2nd February, 2015 when this appeal had first come up before us, the following order was passed:-

**“LPA No.52/2015 & CM No.1832 & CM No.1834/2015
(stay) & (addl. documents).”**

1. This intra-court appeal impugns the order dated 24th December, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.9222/2014 filed by the appellant.

2. Goods of the appellant were on 29th October, 2012, 30th October, 2012 and 31st October, 2012 seized under Section 110 of the Customs Act, 1962. However the said goods were returned on 6th November, 2012, 9th November, 2012 and 20th November, 2012 respectively by observing that “The

detention of goods under Panchnama dated stands vacated following matching the goods with the documents”.

3. The appellant filed the writ petition from which appeal arises impugning the letters dated 15th November, 2014 and 21st November, 2014 of the respondent asking the appellant to appear before the respondent. The respondent claims to have so summoned the appellant in exercise of powers under Section 108 of the Customs Act.

4. It is the admitted position that the appellant is being so summoned since January, 2014 and has appeared before the respondent on a number of occasions.

5. The appellant filed the writ petition from which this appeal arises invoking the principle of waiver and promissory estoppel, contending that the respondent having vacated the order of seizure / detention of goods after matching the goods with the documents submitted by the appellant, is deemed to have waived any further proceeding and is estopped from enquiring further about the matter.

6. The learned Single Judge dismissed the writ petition by observing that the respondent was entitled to verify the authenticity of the documents submitted by the appellant and on the basis of which the seizure / detention order was vacated; that thus the endeavour of the respondent to verify the documents provided by the appellant cannot be interdicted and rejecting the contention that the respondent is estopped from verifying the documents.

7. The senior counsel for the appellant, before us also has pegged his case only on the plea of promissory estoppel.

8. The said plea is clearly misconceived as held by the learned Single Judge also. Once it is found that the seizure of the documents was in exercise of powers under Section 110 of the Customs Act, it has to be seen whether under the

said Act, upon the seizure / detention order being vacated nothing survives. If it is not so under the statute, the principle of estoppel against the provisions of the statute would not arise. However neither the appellant has considered the provisions of the Customs Act nor has the learned Single Judge referred to the same. Upon our putting so to the senior counsel for the appellant, he sought a passover to study this aspect.

9. However after passover, the senior counsel for the appellant again took up the plea of estoppel contending that the order vacating the order of detention / seizure is an executive order.

10. We are unable to agree. We as such asked the counsel for the respondent appearing on advance notice to take us through the scheme of the Act.

11. Our attention has been invited to Section 110(2) which provides that if no notice under Section 124(a) in respect of the goods so seized is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. Admittedly, no such notice has been given. The counsel for the respondent however says that Section 124 provides for issuance of a show cause notice before confiscating any goods or imposing any penalty. It is argued that if notice is not given within six months, the respondent would be disentitled from passing any order confiscating the goods but would still be entitled to impose penalty. On our enquiry, whether any time limit is provided for issuing any notice of imposing penalty, the counsel for the respondent states that no such time limit has been provided and refers to **Jeevraj Vs. Collector of Customs** (1997) 8 SCC 519 laying down that Section 124 does not lay down any period within which notice is required to be given.

12. We are however not convinced. Section 125 provides for payment of fine in lieu of confiscation. It prima facie appears that once the respondent has not issued any notice under Section 124 within six months of seizure of goods, it would not be entitled to impose any penalty also. Though Section 108 empowers the respondent to summon but such summoning can only be in connection with an action which the respondent is entitled to take and not in connection with a matter the right of the respondent to pursue which has been extinguished.

13. In spite of giving opportunity to the counsels, no clarity is emerging.

14. Issue notice. Notice is accepted by the counsel for the respondent. Since the writ petition was dismissed in limine, the respondent had no opportunity to submit a counter affidavit. The same be filed within two weeks, particularly addressing the aforesaid question. Rejoinder if any within one week thereafter.

15. Renotify on 4th March, 2015.”

2. The respondent has thereafter filed a counter affidavit and to which a rejoinder has been filed by the appellant.

3. However when the hearing on the appeal commenced on 13th April, 2015, the senior counsel for the appellant instead of addressing the questions culled out by us in the aforesaid order again started arguing the plea of estoppel. When we drew the attention of the senior counsel to the aforesaid order dated 2nd February, 2015, he stated that he was not aware thereof.

Accordingly, the matter was passed over and a copy of the order supplied to the senior counsel for the appellant.

4. The senior counsel for the appellant after passover contended that though the detention on 29th October, 2012, 30th October, 2012 and 31st October, 2012 of the goods of the appellant, was seizure thereof within the meaning of Section 110 of the Customs Act but the said order of seizure was revoked by the Customs Authorities themselves on 6th November, 2012, 9th November, 2012 and 20th November, 2012. When we enquired from the senior counsel, the provision which permits revocation of an order under Section 110, though the senior counsel could not show any provision in the Customs Act but referred to Section 21 of the General Clauses Act, 1897, which provides that the power *inter alia* to issue orders includes a power to rescind the order issued. However we further enquired from the senior counsel for the appellant whether not Section 21 of the General Clauses Act is not applicable where the statutory authority is required to act *quasi* judicially and whether not the Customs Authorities, in the matter of passing an order under Section 110, are required to act *quasi* judicially.

5. Faced therewith the senior counsel for the appellant stated that the only point he is urging in this appeal is that the notice dated 21st November,

2014 issued to the appellant under Section 108 of the Customs Act contains a finding against the appellant and which is not permissible in law in a show cause notice.

6. Though we doubt very much that the said contention arises from the pleadings in the writ petition or the memorandum of appeal but the appeal having been confined to this argument only, we want to deal therewith so as to put a quietus. The said notice dated 21st November, 2014 is as under:-

“Gentlemen,

Subject: Investigation in respect of procurement of High Eng Luxury Wrist Watches by M/s Johnson Watch Company – regarding.

Please refer to this office letter of even no. dated 15.11.2014 wherein you were asked to submit necessary documents and remain present for verification of watches detained under various panchnamas. Further your attention is invited towards the undertaking dated 21.11.2014 in response to summons dated 15.11.2014 wherein it was undertaken to depute your authorized representative for verification of the documents submitted by you at the time of vacation of detention of watches.

In furtherance to above please find enclosed herewith list of watches wherein the documents submitted by you does not carry mention of serial numbers of watches and watches where either model nos. or serial nos. did not match with the documents submitted.

You are hereby humbly requested depute an authorized signatory for verification of documents pending in respect of to

obtain the records of serial numbers of the watches appearing in the attached annexure to this office at the earliest.

This information is sought under Section 108 of Customs Act, 1962. An early response in the matter will be highly appreciated.

Yours Sincerely,

Enclosed: as above.

*(Yogesh Kumar Chaudhary)
Sr. Intelligence Officer”*

7. It was argued that the second paragraph of the aforesaid notice contains a finding that the documents submitted by the appellant do not carry a mention of serial number of watches and that the model number or serial number on the documents did not match with the watches. It is argued that no such finding of fact, against the appellant, could have been returned in a notice under Section 108 which is in the nature of a show cause notice.

8. We are afraid the aforesaid contention is on a complete misreading of the notice aforesaid. The appellant cannot pick a line here and a line there, out of context and impute a motive, which a reading of the whole document does not disclose. A reading of the whole of the aforesaid notice dated 21st November, 2014 shows that the purport thereof is to seek information from the appellant qua the doubts entertained by the Customs Authorities and for eliciting the response, the doubts entertained have necessarily to be stated.

9. Though the senior counsel for the appellant at the beginning of the hearing had also handed over written submissions and insisted on reading the same but in view of having confined the appeal to the aforesaid contention only, need is not felt to refer thereto. We may also record that the counsel for the respondent in his counter affidavit supported by copies of the judgments handed over in the Court today has sought to address the issue highlighted by us in our order dated 2nd February, 2015 supra but again in view of the appeal having been confined as aforesaid, need is not felt to refer thereto also.

10. The only argument urged by the senior counsel for the appellant having not found favour with us, the appeal is dismissed. We refrain from imposing costs on the appellant.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

APRIL 23, 2015

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