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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment Reserved on: 7th October, 2015
Judgment Delivered on: 13th October, 2015
+ **WP(C) 9508/2015 & CM No. 22311/2015**

S K TRADING

.... Petitioner

versus

UNION OF INDIA & ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Manish Kaushik
For the Respondents : Mr Akshay Makhija, Ms Mahima Bahl, Mr Siddharth Thakur,
Ms Sayngeeta Mktan for UOI.
Ms Sonia Sharma and Ms Neha Chugh for R-2 & 3.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

WP(C) 9508/2015 & CM No.22311/2015(stay)

1. The petitioner impugns the order dated 02.09.2015, whereby the Commissioner of Customs has extended the period for issuance of show-cause notice for confiscation of the goods under proviso to Section 110 (2) of the Customs Act, 1962 (hereinafter referred to as "the Act") .

2. The ground is that under proviso to Section 110(2), the power can be exercised by the Commissioner prior to the expiry of initial period of six months stipulated under section 110(2) and in case the said power is not

exercised within the stipulated period of six months, the seized goods are liable to be released. It is contended that the goods were seized on 03.03.2015 and the stipulated period would expire on 02.09.2015. By the impugned order dated 02.09.2015, the period of six months has been extended from 04.09.2015. It is submitted that since the period expired on 02.09.2015 and the extension is from 04.09.2015, the period has lapsed and the goods are liable to be released. In support, reliance is placed on paragraph 14 of the decision of the Supreme Court in **I. J. Rao, Asstt. Collector of Customs & Others versus Bibhuti Bhushan Bagh and Another: (1989) 3 SCC 202.**

3. *Per contra*, the contention of the learned counsel for the respondents is that under Section 9 of the General Clauses Act, the date on which the goods were confiscated, i.e., on 03.03.2015 is to be excluded for the purposes of computation of the period of six months and as such, the period would have commenced on 04.03.2015 and would have ended with the end of 03.09.2015 and the order of the Commissioner passed on 02.09.2015, thus rightly grants an extension of six months commencing from 04.09.2015. Alternatively, it is contended that since the order impugned in the petition was passed on 02.09.2015, i.e., even prior to the period as per the calculation of the petitioner, the said period under proviso to Section 110 (2) would extend for a further period of six months from the expiry of the initial period of six months and the mere mentioning of the date 04.09.2015 in the impugned order would be of no consequence. In support, reliance is placed on paragraphs 35 and 36 of the decision of the Supreme Court in **M/s. Econ Antri Limited v. M/s. Rom Industries Ltd. & Anr.: (2014) 11 SCC 769.**

4. To resolve the controversy that arises in the present petition, it would be necessary to examine the provisions of Section 110(2) of the Act. Section 110(2) reads as under:-

“**110(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 Commissioner of Customs for a period not exceeding six months.”

5. Section 110(2) stipulates that where goods are seized under sub-Section (1) and no notice, as contemplated by Section 124(a), is issued within six months of the seizure of the goods, the goods are to be returned to the person from whose possession, the same were seized. The Proviso to Section 110(2) stipulates that the Commissioner of Customs, for sufficient cause being shown, is empowered to extend the said period by a further period, not exceeding six months.

6. In the present case, the goods were seized on 03.03.2015. As per the contention of the petitioner, the said period of six months would have expired on 02.09.2015. Show-cause notice dated 31.08.2015 was issued to the petitioner to show-cause as to why extension should not be granted for issuance of notice under section 124(a) of the Act. On 02.09.2015, a representative of the petitioner appeared before the Commissioner of Customs and stated that the petitioner had no role and according to it, no

offence had been committed and prayed for speedy investigation. On 02.09.2015, by the order impugned in the present petition, the Commissioner of Customs has found it necessary to extend the period so that investigation could be completed properly. Thereafter, the Commissioner of Customs has extended the period for issuance of notice under section 124(a) for a further period of six months from 04.09.2015.

7. Paragraph 14 of the Judgment of the Supreme Court in the case of **I. J. Rao, Asstt. Collector of Customs & Others (Supra)** relied upon by the Counsel for the Petitioner reads as under:

“14. We have said that notice must go to the person, from whose possession the goods have been seized, before the expiry of the original period of six months. It is possible that while notice is issued before the expiry of that period, service of such notice may not be effected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires. Service of the notice may be postponed or delayed or rendered ineffective by reason of the person sought to be served attempting to avoid service of notice or for any other reason beyond the control of the customs authorities. In that event, it would be open to the Collector, if he finds that sufficient cause has been made out before him in that behalf to extend the time beyond the original period of six months, and thereafter, after notice has been served on the person concerned, to afford a post-decisional hearing to him in order to determine whether the order of extension should be cancelled or not. Having regard to the seriousness and the magnitude of injury to the public interest in the case of the illicit importation of goods, and having regard to considerations of the damage to economic policy underlying the formulation of import and export

planning, it seems necessary to reconcile the need to afford an opportunity to the person affected with the larger considerations of public interest.”

8. The judgment in the case of **I. J. Rao, Asstt. Collector of Customs & Others (Supra)** does not further the case of the petitioner inasmuch as the said judgment deals with the issuance of notice of the proposed extension prior to passing of an order under Section 110 of the Act and in those circumstances, the Supreme Court held that the notice must go to the persons, from whose possession the said goods had been seized before the expiry of the period of six months. In the present case, there is no dispute that the notice of the proposed extension as contemplated had been issued within the initial period of six months and even the order under proviso to Section 110(2) has been passed within the initial period of six months.

9. Now coming to the submission of the counsel for the Petitioner about the commencement of the extended period from 04.09.2015 as mentioned in the impugned order, we are of the view that the mere mentioning ‘for a period of six months from 04.09.2015’ would not invalidate the extension. The order records that the period has been extended by a period of six months, and since the extension would come into effect for six months on the expiry of the initial period, the mentioning of the date would not have any consequence in so far as the period of six months is concerned.

10. The proviso to Section 110(2) contemplates an extension of the initial period of six months and does not contemplate renewal or commencement of a fresh period of six months. Since it is an extension, that is contemplated,

the same would commence from the expiry of the initial period. The extended period starts automatically with the expiry of the initial period unlike in a case of renewal, which may be from an entirely different date.

11. In this back drop, even if the contention were to be accepted that the period ended on 02.09.2015, the same would end with the end of 02.09.2015 i.e. on the midnight of 02.09.2015 and the extension of six months would have commenced with the beginning of 03.09.2015, i.e., 00 hours on 03.09.2015. The impugned order was passed on 02.09.2015, within the initial period of six months and as such, is in consonance with Section 110(2) of the Act.

12. Coming to the contention of the counsel for the Respondent that the extension from 04.09.2015, is not erroneous as the date of the seizure of the goods is to be excluded and the initial period of six months would commence from 04.03.2015 and end with 03.09.2015 and thus the extension has rightly been done from 04.09.2015.

13. In the case of **Econ Antri Ltd. v. Rom Industries Ltd.:** (2014) 11 SCC 769, the Supreme Court held as under:

“35. In this connection we may also usefully refer to the judgment of the Division Bench of the Bombay High Court in Vasantlal Ranchhoddas Patel v. Union of India[Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] which is approved by this Court in Gopaldas Udhavdas Ahuja v. Union of India [(2004) 7 SCC 33 : 2004 SCC (Cri) 1830] , though in different context. In that case the premises of the appellants were searched by the officers of the Enforcement Directorate. Several packets containing diamonds were seized. The

appellants made an application, for return of the diamonds, to the learned Magistrate, which was rejected. Similar prayer made to the Single Judge of the Bombay High Court was also rejected. An appeal was carried by the appellants to the Division Bench of the Bombay High Court. It was pointed out that under Section 124 of the Customs Act, 1962, 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 with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Police, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Under Section 110(1) of the Customs Act, 1962 a proper officer, who has reason to believe that any goods are liable to confiscation may seize such goods. Under sub-section (2) of Section 110 of the Customs Act, 1962:

“[w]here 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”.

Under proviso to Section 110 sub-section (2), however, the Collector could extend the period of six months on sufficient cause being shown. It was argued that the Customs Officers had seized the goods within the meaning of Section 110 of the Customs Act, 1962 on 4-9-1964. The notice contemplated under Section 124(a) was given after 3-3-1965, that is, after the period of six months had expired. As per Section 110(2), notice contemplated under Section 124(a) of the Customs Act, 1962 had to be given within six months of the seizure of the goods, and, therefore, notice issued after the expiry of six months was bad in law and, hence, the Collector of Customs was not competent to extend the period of six

months under the proviso to sub-section (2) of Section 110 as he had done. Therefore, no order confiscating the goods or imposing penalty could have been made and the goods had to be returned to the appellants. It was argued that Section 9 of the General Clauses Act, 1897 has no application because the words “from” and “to” found in Section 9 of the General Clauses Act, 1897 are not used in sub-section (2) of Section 110 of the Customs Act, 1962. This submission was rejected and Section 9 of the General Clauses Act, 1897 was held applicable.

36. Speaking for the Bench Chainani, C.J. observed as under: (Vasantlal Ranchhoddas Patel case [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] , AIR pp. 141-42, para 10)

“10. ... The principle underlying Section 9 has been applied even in the cases of judicial orders passed by courts, even though in terms the section is not applicable. See Ramchandra Govind Unavne v. Laxman Savleram Ronghe[AIR 1938 Bom 447] , Dharamraj Mahadeo v. Commr. [AIR 1957 Bom 154] ,Puran Chand v. Mohd. Din [AIR 1935 Lah 291] , Marakanda Sahu v. Lal Sadananda Singh [AIR 1952 Ori 279] and Official Liquidator v. N. Padmanabha Menon [(1954) 2 MLJ 44] . The material words in sub-section (2) of Section 110 are ‘within six months of the seizure of the goods’. In such provisions the word ‘of’ has been held to be equivalent to ‘from’: see Williams v. Burgess [(1840) 12 Ad & El 635 : 113 ER 955] . In that case Section 1 of the relevant statute enacted that warrants of attorney shall be filed ‘within twenty-one days after the execution’. Section 2 enacted that unless they were ‘filed as aforesaid within the said space of twenty-one days from the execution’, they and the judgment thereon shall be void subject to the conditions specified in the section.

The warrant of attorney was executed on 9-12-1839 and it was filed, and judgment entered up on the 30th December. It was held that in computing the period of 21 days the day of execution must be excluded. Reliance was placed on *Fallon, ex p* [(1793) 5 TR 283 : 101 ER 159] in which the word used was 'of' and not 'from'. It was observed that 'of', 'from' and 'after' really meant the same thing and that no distinction could be suggested from the nature of the two provisions. In *Stroud's Judicial Dictionary*, 1953 Edn., Vol. 3 in Note (5) under the word 'of', it has been observed that 'of' is sometimes the equivalent of 'after' e.g. in the expression 'within 21 days of the execution'. The principle underlying Section 9 of the General Clauses Act cannot therefore, be held to be inapplicable, merely because the word used in sub-section (2) of Section 110 is 'of' and not 'from'."

37. The relevant extracts from *Halsbury's Laws of England* [3rd Edn., Vol. 37, pp. 95-96] were quoted. They read as under: (*Vasantlal Ranchhoddas Patel case*[*Vasantlal Ranchhoddas Patel v. Union of India*, AIR 1967 Bom 138] , AIR p. 142, para 11)

"11. ... '168. Exclusion of first day.—The general rule in cases in which a period is fixed within which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him.

This general rule applies irrespective of whether the limitation of time is imposed by the act of a party or by statute; thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation."

38. In the circumstances, it was held in Vasantlal Ranchhoddas Patel case[Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] that the day on which the goods were seized has to be excluded in computing the period of limitation contemplated under sub-section (2) of Section 110 and therefore the notice was issued within the period of limitation. It is pertinent to note that under Section 110(2) of the Customs Act, notice had to be given within six months of the seizure of the goods. Similarly, under Section 142(b) of the NI Act, the complaint has to be made within one month of the date on which cause of action arose. The view taken in Vasantlal Ranchhoddas Patel [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] meets with our approval.

(underlining added)

14. In terms of the law as laid down by the Supreme Court in **Econ Antri Ltd. (supra)**, in computing the period of limitation contemplated under Section 110(2), the date on which the goods were seized is to be excluded. In the present case, the initial period of six months for computing the period of limitation as stipulated in Section 110(2) would commence on 04.03.2015 and would end on 03.09.2015. Thus, the order dated 02.09.2015 extending the period from 04.09.2015 cannot be faulted. The initial six months period would have ended on the midnight intervening 3rd and 4th September, 2015 and immediately thereon, the extended period in terms of the order dated 02.09.2015 would commence with the commencement of 04.09.2015.

15. Looked at from either angle, we do not find any infirmity in the order impugned in the present petition. The Commissioner of Customs, in exercise of powers, under proviso to Section 110(2), has, by order dated 02.09.2015, extended the initial period of six months by a further period of six months.

16. In this view of the matter, there is no merit in the writ petition. The same is accordingly dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J.

BADAR DURREZ AHMED, J.

October 13, 2015

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