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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.08.2018

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W.P.(C) 9089/2017

KUSUM SINGH

..... Petitioner

Through: Mr. Piyush Kumar, Ms. Vidushi
Shubham & Ms. Reena Rawat, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vinod Diwakar, CGSC with Mr.
Sanjay Pal, Adv. for R-1,2/UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J. (ORAL)

1. The petitioner's grievance is that pursuant to search and seizure proceedings conducted by the Department of Revenue Intelligence (DRI), gold jewellery and other like valuables were detained; they were found in the locker maintained in the Corporation Bank, Mayur Vihar Branch. The search and seizure proceedings took place on 07.07.2017. The DRI officials apparently also seized the key; the contents of the locker are jewellery etc, and continue to be in the locker. The DRI inventorized the jewellery. The petitioner has sought appropriate directions for the release of the key as well as the articles; she cites Section 110(2) of the Customs Act. The respondent/DRI in the counter affidavit alleges that the premises of

the petitioner were searched on account of information gathered that there was extensive fraudulent drawback by credits on account of fictitious export of readymade garments. It is stated that the investigations on this aspect are continuing and are at an advanced stage. As far as the petitioner's complaint with respect to jewellery and locker is concerned, the DRI alleges that she has failed to indicate the source of funds to support the purchase of jewellery inventorized in the panchnama dated 07.07.2017. On this aspect she was silent, when she made a request for release of the articles. The other allegation which has been made is with respect to the suppression of the information regarding shares in which the petitioner had stake.

2. The petitioner has relied upon the judgment of this Court in *Jatin Ahuja Vs. UOI* wherein the effect of Section 110 and obligation of the revenue to ensure that a show cause notice under Section 124 is issued within a stipulated time was explained. The Court cited the judgment in *Asstt. Collector Of Customs vs Charan Das Malhotra* 1972 AIR 689; *J.K. Bardolia Mills vs M.L. Khunger, Dy. Collector* (1994) 5 SCC 332 and also analyzed the provisions of Section 110 as well as Section 110A. It considered the judgment of the Bombay High Court *Jayant Hansraj Shah v Union of India* 2009 (1) Bom CR 474 which was relied upon by the Revenue. The Court held as follows:

“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 provisional 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 Subsection (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.

3. In the present case, the key was seized and consequently articles were detained on 07.07.2017. Since then, the petitioner has not been afforded access to the jewellery. Though it is not a direct seizure or detention the effect of such action is that the petitioner has been deprived of the use of her property. The period provided under Section 110 i.e. six months elapsed, the Revenue could have – if it chose to extend that period provided the powers were resorted to within the six month period. Even that option was not exercised. Consequently, upon the expiry of one year (from 17.7.2017 to 16.07.2018), the one year period had ended. The petitioner is, therefore, clearly entitled to release of all the articles in her locker as well as the locker key. Since the customs authorities have inventorized these goods, it is open for them to continue with the

adjudication proceedings as and when they issue show cause notice. The writ petition succeeds; the respondents are hereby directed to ensure that the key of the locker in question seized from the petitioner's premises are returned within two weeks. She shall have the right to utilize the jewellery which was found in the locker during the search. The writ petition is allowed in the above terms.

Order dasti.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 28, 2018/akv



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