



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2025

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THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

WP No. 10428 of 2025

AND

WMP NO. 11725 OF 2025, WMP NO. 11727 OF 2025, WMP NO. 11728 OF 2025

1. Vikram Jain

Petitioner(s)

Vs

1. Principal Commissioner Of Customs
Customs House, 60, Rajaji Salai,
Chennai-01.

Respondent(s)

PRAYER

To call for records on the file of the Respondent in its impugned seizure memo dt 08.05.2024 and quash the same as it is unreasonable, illegal improper and in gross violation of principles of natural justice, and consequently, direct the respondent to release the seized items covered under the seizure memo dt 08.05.2024

For Petitioner(s): Mr. Nithyaesh Nataraj
for
Mr. Akash Srinanda and
Ukkash F

For Respondent(s): Mr. Sai Srujan Tayi Senior
Standing Counsel

ORDER

The case on hand makes this Court the need to elucidate the distinction between Section 110 (2) and Section 110 (3) of the Customs Act, 1962.



2. In the instant case, Indian Currencies have been seized from the petitioner. The petitioner seeks for return of those Indian Currencies. The petitioner pleads innocence of any customs violations as seen from the averments contained in the affidavit filed in support of this writ petition and therefore, according to the petitioner, seizure of the Indian Currencies from him is arbitrary and illegal. The seizure has been effected by the respondent (Customs Department) by exercising powers under Section 110 of the Customs Act.

3. The petitioner claims that since Currencies have been seized, Section 110 (2) of the Customs Act, 1962 has to be strictly complied with by the respondent. According to the petitioner, since show cause notice has not been issued by the respondent within a period of six months as stipulated under Section 110(2) of the Customs Act, 1962, or the Principal Commissioner of Customs, Customs House, Commissioner of Customs has not extended the period for issuance of show cause notice by another period of six months as per the provisions of Section 110 (2) of the Customs Act, 1962, the seized Currencies will have to be returned to the petitioner.

4. A counter affidavit has been filed by the respondent before this Court stating that the seizure has been effected by the Customs Department by exercising powers under Section 110 (3) of the Customs Act, 1962.



5. According to them, since the Currencies were seized from the premises of one Mittalal, Section 110(2) of the Customs Act, 1962 does not get attracted as the seizure of Currencies will fall within the definition of 'things' as provided under Section 110 (3) of the Customs Act, 1962. Therefore, according to the respondent, no show cause notice, as contemplated under Section 110 (2) of the Customs Act, 1962 is required to be given to either Mittalal or to the petitioner. The respondent has also contended that one of the appraisers of the Customs Department had collected bribe amounts from various exporters and has issued fabricated documents to enable the exporters to illegally export their goods.

6. According to the respondent, Mittalal was one of the agents who had colluded with an appraiser of the Customs Department, who had collected bribe for the purpose of illegally aiding the exporters in exporting the goods.

7. The following are the undisputed facts:

- a) No show cause notice was issued to Mittalal and to the petitioner after the seizure of Currencies, which is the subject matter of this writ petition;
- b) No criminal complaint has been lodged by the respondent (Customs Department) against Mittalal or the petitioner till date;
- c) The contention of the respondent before this Court is that criminal law was set in motion as against the appraiser, who had collected bribe to illegally



aid the exporters;

d) It is an admitted fact that no criminal complaint was lodged by the Customs Department against the petitioner or Mittalal for any alleged offence.

8. The learned counsel for the petitioner drew the attention of this Court to the following authorities in support of his contentions:

a) A Division Bench Judgment of the Gujarat High Court in the case of ***AM Overseas Vs. Union of India and Ors. reported in 2005 SCC Online Guj 195;***

b) A Division Bench Judgment of the Delhi High Court in the case of ***Mohd. Salman Khan Vs. Union of India reported in 2016 SCC OnLine Del 6739***

and would submit that since the Currencies have been seized as per the provisions of Section 110 (1) of the Customs Act, 1962 and since the procedure contemplated under Section 110 (2) of the Customs Act, 1962 has not been followed by issuing show cause notice within the stipulated time as contemplated therein, the seizure is bad in law and therefore, the seized Currencies will have to be returned back to the petitioner:

9. The learned counsel for the petitioner, relying upon the aforesaid authorities, would submit that a similar issue was considered by both the High Courts and both the High Courts have consistently held that in case of seizure of



Currencies, if the procedure contemplated under Section 110 (2) of the Customs Act, 1962 is not followed, the said seizure is bad in law and directed the Customs Department to return the seized Currencies back to the person from whom the seizure was effected.

10. On the other hand, the learned senior standing counsel appearing for the respondent would submit that eventhough the Currencies were seized, the said Currencies will not fall under Section 110(1) of the Customs Act, 1962 as they are not goods for the purpose of attracting Section 110 (1) of the Customs Act, 1962. He would submit that only in case where there was any illegal transportation of Currencies by passengers from India to abroad or from abroad to India and the said Currencies are seized, Section 110 (1) of the Customs Act, 1962 gets attracted but not in the instant case. He would submit that since during the course of investigation as against the appraiser of the Customs Department who had fraudulently fabricated the documents and also collected bribe, it was noticed that Mittalal had aided the said appraiser in committing an illegal act, where the Currencies were seized and therefore, Section 110 (1) of the Customs Act, 1962 does not get attracted and Section 110(3) of the Customs Act, 1962 gets attracted, as the Currencies seized by the Customs Department in the instant case will fall under the definition of 'things' as provided under Section 110 (3) of the Customs Act, 1962.



11. He would also submit that the decision of the Gujarat High Court relied upon by the learned counsel for the petitioner was also the subject matter of appeal before the Honourable Supreme Court and the said appeal was disposed of by the Honourable Supreme Court on 18.07.2006, reported in MANU/SC/3281/2006 and the Honourable Supreme Court had left the issue open for consideration in a future case.

12. The learned senior standing counsel appearing for the respondent also drew the attention of this Court to the Judgment of a learned Single Judge of the Calcutta High Court dated 21.12.2001 in the case of ***Rohit Kumar Vs. Union of India (UOI)***. Relying upon the aforesaid decision of the Calcutta High Court, he would submit that in the said decision, it has been held that the word 'things' as provided under Section 110 (3) of the Customs Act, 1962 was held to be money, which is lying in a bank account. Therefore, he would submit that the Currencies seized from the Mittalal will also fall under the category 'things' as provided under Section 110 (3) of the Customs Act, 1962.

Discussion:

13. The distinction to Section 110 (2) and Section 110 (3) of the Customs Act, 1962 lies in the type of items they cover and their procedural implications specifically recorded from time to time.



14. Section 110 of the Customs Act, 1962 is reproduced hereunder:

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

If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.



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(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]



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(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:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents



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are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

[110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.]

15. Section 110 (2) of the Customs Act, 1962 addresses the seizure of goods, which is to be released if no notice is given within a period of six months of seizure of the goods under clause (a) of Section 124 of the Customs Act, 1962. The procedural key point is that if a show cause notice under Section 124 of the Customs Act, 1962 is not issued within a period of six months of seizure, the goods must be returned. The six months period can be extended by the Principal Commissioner of Customs for up to another period of six months after informing the person in writing, from whom the goods were seized before the expiry of period so specified during the initial seizure.



16. In contrast, Section 110 (3) of the Customs Act, 1962 deals with seizure of documents and 'things' relevant to any proceedings under the Customs Act, 1962. Unlike Section 110 (2) of the Customs Act, 1962, there is no specific time limit for issuance of show cause notice for seizure of documents or 'things'.

17. Under Section 110(2) of the Customs Act, 1962, the goods must be returned to the owner if no show cause notice is issued within the prescribed time limit fixed under Section 110 (2) of the Customs Act, 1962. On the other hand, documents or 'things' seized under Section 110 (3) of the Customs Act, 1962 can be retained for the duration of the proceedings.

18. The Customs Department is empowered to initiate action against the violators only in accordance with the provisions of the Customs Act. The violations must necessarily arise out of exports or imports. In the instant case, it is an admitted fact that the Customs Department has seized the Currencies from Mittalal only under Section 110 of the Customs Act, 1962.

19. The learned Senior Standing Counsel during the course of his submissions while making an attempt to distinguish the decision relied upon by the learned counsel for the petitioner, referred to supra, has submitted that the Currencies, which were seized in those decisions were seized while the



passenger was attempting to transport the Currencies illegally from India to abroad and therefore, the said decision relied upon by the learned counsel for the petitioner has no bearing to the facts of the instant case. He would contend that since the Currencies were not seized during the course of an export or an import at the relevant point of time, Section 110 (2) of the Customs Act, 1962 does not get attracted and only Section 110(3) of the Customs Act, 1962 gets attracted. The said argument does not hold water in view of the fact that it is an undisputed fact that the seizure was effected only under Section 110 of the Customs Act, 1962 and only in cases where there is a violation committed by any person with regard to an export or an import, the Customs Department can exercise its power as per the provisions of the Customs Act, 1962.

20. As observed earlier, there is a clear distinction between Section 110(2) and Section 110 (3) of the Customs Act, 1962. This Court, as observed earlier, is of the view that Section 110 (3) of the Customs Act, 1962 deals only with documents and 'things' relevant to any proceedings under the Customs Act, 1962. This may include items like invoices, contracts or electronic records, etc., which are of similar nature.

21. In fact, the word 'goods' has been defined under the Customs Act, 1962 and they include Currencies. Goods is defined under Section 2 (22) of the Customs Act, 1962 and it reads as follows:



“(22) “goods” includes—

- (a) vessels, aircrafts and vehicles;*
- (b) stores;*
- (c) baggage;*
- (d) currency and negotiable instruments; and*
- (e) any other kind of movable property;”*

22. Since the Customs Department is empowered to exercise its powers only as per the provisions of Customs Act, 1962, the seizure of Currencies whether the same has been effected as in the instant case or from a passenger, who is trying to carry the same abroad illegally is immaterial and irrelevant. Once the Customs Department has effected seizure as per Section 110 of the Customs Act, 1962, the said seizure of Currencies will only fall under Section 110(1) of the Customs Act, 1962 and therefore, necessarily Section 110(2) of the Customs Act, 1962 has to be strictly followed.

23. In the instant case, it is an admitted fact that no show cause notice has been issued by the Customs Department to Mittalal or to the petitioner herein within the stipulated time period as prescribed under Section 110(2) of the Customs Act, 1962. In view of the same, the decisions relied upon by the learned counsel for the petitioner viz., the Division Bench Judgment of the Gujarat High Court as well as the Division Bench Judgment of the Delhi High Court squarely apply to the facts of the instant case as well. Therefore, the

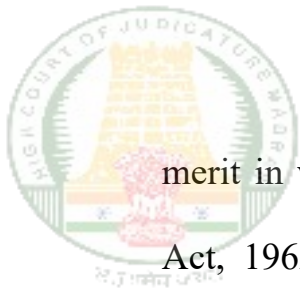


prayer sought for in this writ petition seeking for quashing of the seizure memo dated 08.05.2024 as well as for return of Currencies back to the petitioner has to be granted by this Court.

24. One more contention was raised by the learned Senior Standing Counsel appearing for the respondent that the Currencies were not seized from the petitioner but were seized only from the petitioner's father, one Mittalal.

25. However, this Court, after giving due consideration to the documents filed along with this writ petition as well as the averments contained in the affidavit filed in support of this writ petition, is of the considered view that the petitioner has been able to establish before this Court that the seized currencies belong to the petitioner as declared in the Income Tax Return and in the Balance Sheet. It is also to be noted that Mittalal is none other than the father of the petitioner, which is also not disputed by the respondent.

26. For the foregoing reasons, the impugned seizure memo dated 08.05.2024 issued by the respondent is quashed and this writ petition is allowed by directing the respondent to return the seized Currencies as per the seizure memo dated 08.05.2024 to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. However, liberty is granted to the respondent to initiate fresh action against the petitioner if the same deserves any



merit in whatever manner they deem fit as per the provisions of the Customs Act, 1962 in accordance with law. No Costs. Consequently, connected writ miscellaneous petitions are closed.

10-12-2025

Index:Yes

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes

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Note: Issue Order Copy on 16.12.2025.

To

1.Principal Commissioner Of Customs
Customs House, 60, Rajaji Salai,
Chennai-01.



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ABDUL QUDDHOSE J.

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