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Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.20/2024 with
MC (WA) No.14/2024

Date of CAV : 05.02.2025
Date of pronouncement : 18.02.2025

1. Union of India through Ministry of Finance, Department of Revenue, North Eastern Region, M.G. Road, Shillong, Meghalaya-793001.

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

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

..... Appellants

Vs.

Bikash Soni

..... Respondent

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv

For the Respondent : Mr. D.S. Chadha, Adv with
Mr. B. Deb, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: No

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.



JUDGMENT
(Delivered by the Hon'ble, the Chief Justice)

The point involved in this appeal centres around Section 124(a) read with Section 110(1) and (2) of the Customs Act, 1962.

Section 124 states that before passing any order for confiscation of any goods or imposition of any penalty, a notice in writing by the customs authority informing the person of the grounds on which action is contemplated is to be “given”.

Section 110(1) gives the proper officer of customs power to seize goods which he thinks are liable to confiscation.

Now, Section 110(2) provides that if no notice under Section 124(a) is given to the person from whom the goods are seized within six months of their seizure they would have to be returned to him.

The proviso to Section 110(2) vests the Principal Commissioner of Customs or Commissioner of Customs power to extend this period for a further period of six months upon recording reasons for doing so.

It is absolutely clear from a reading of these provisions that if a show cause notice is not “given” within six months and within a further period of six months upon extension of time to do so by the Commissioner,



the seized goods would have to be returned to the person from whom they were seized. There is no provision in the statute for extension of time.

However, the show cause notice not “given” within the stipulated time is not invalid. The adjudication proceedings concerning confiscation of goods and imposition of penalty can be initiated and continued.

The seizure of the subject gold items was made by the Customs authorities on 4th April, 2023.

A show cause notice under Section 124 dated 3rd October, 2023 is stated to have been signed on that date electronically by the authorised officer. This was within the period of six months of seizure. However, it is no case of the respondents that it was also sent and received electronically within this period. In fact, this show cause notice was physically posted on 5th October, 2023 and delivered on 10th October, 2023 to the respondent. This was much beyond the period of six months.

Learned Deputy Solicitor General of India argued that the acute political unrest in Manipur, prevented the issuance and service of the show cause notice within time. This Court should take judicial notice of the situation and treat the show cause notice as having been validly delivered under Section 110(2) of the said Act, he submitted.



We, note the first proviso of Section 110(2) which states that the Principal Commissioner of Customs or Commissioner of Customs has the power to extend the period of six months by a further period not exceeding six months.

This power was not exercised by the concerned Principal Commissioner or Commissioner.

The words of Section 110(2) of the Customs Act, 1962 are absolutely plain that if, no show cause notice is “given” within six months or within such extended time as provided in the first proviso not exceeding six months, the seized goods have to be returned to the person from whom they were seized. There is no power conferred on the Court to extend this period. This statutory period is strict and not relaxable at all.

In case of extraordinary circumstances in Manipur as stated by learned DSGI, the Principal Commissioner or Commissioner ought to have exercised his power to extend the time by six months but he did not do so.

Hence, only the contention of the appellant authorities is that an interpretation of the word “given” be made by us so that signing or issuance of the show cause notice on 3rd October, 2023 should be considered as “giving notice”. In that case, it could be said that the show cause was



“given” within six months and there is no obligation on the part of the said authorities to return the goods.

The unreported Division Bench judgment of the Delhi High Court cited by learned counsel for the respondent in *Zhinet Banu Nazir Dadany v. Union of India & anr* decided on 17th May, 2019 did not directly deal with this issue. In that case substantial gold was seized by the customs, the show cause notice did not reach the owner of the goods within six months, the goods were not returned, adjudication started and concluded ex parte, and the goods sold by the customs. The Court ruled that the adjudication was illegal. Since the goods had been sold, the owner was directed to be paid the value of the goods by the customs authorities. There is just a line in the judgment that if notice is not “given” within six months, the goods are liable to be returned.

The real point has been decided in *Purushottam Jajodia v. Dir. Of Revenue Intelligence, New Delhi* reported in *2014 (307) E.L.T. 837 (Del)* also cited by learned counsel for the respondent. It is a Division Bench judgment of the Delhi High Court. Justice Badar Durrez Ahmed delivering the judgment of the Division Bench relied upon a dicta of the Supreme Court in *K. Narsimhiah v. H.C. Singri Gowda* reported in *AIR 1966 SC 330* to the following effect:



“15. The view expressed by the Supreme Court was as under:-

“11. This brings us to the main contention that three days’ notice of the special general meeting was not given and so the meeting is invalid. We find it difficult to agree with the High Court that “sending” the notice amounts to “giving” the notice.

12. “Giving” of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however giving is complete in many matters where it has been offered to a person but not accepted by him. Tendering of the notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given, the giving is complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days.”

This dicta of the Supreme Court stopped by saying that by despatch of a notice “giving” was not complete. This view was relied upon and applied by the Gujarat High Court in a customs case in *Ambalal Morarji Soni v. Union of India* reported in *AIR 1972 GUJ 126* to hold that “giving of notice” under Section 110(2) meant service on the owner and not its issuance and despatch. The Court pronounced the following opinion:



“17. The view expressed by the Supreme Court was followed as it should have been, by the Gujarat High Court in the case of *Ambalal Morarji Soni* (supra) while construing the very word “given” appearing in Sections 110(2) and 124(a) of the said Act. After referring to the Supreme Court decision in *K. Narasimhiah* (supra) the Division Bench of the Gujarat High Court observed as under:-

“6. In our opinion, this decision of the Supreme Court clearly indicates that looking to the object for which the notice is to be given as provided in that particular piece of legislation, the Court has to consider whether the giving of the notice with the particular object in view is so material as to render the proceedings subsequent to non-compliance with such provision invalid or in the present case, whether the notice can be said to have been properly given as contemplated by law. The words in Section 124 are – “the owner of the goods or such person is given a notice in writing so far as the Customs Act is concerned. Similar words are found in the Gold (Control) Act. The whole object of giving notice is to inform the person concerned of the grounds on which it is proposed to confiscate the goods or to impose a penalty and to give him an opportunity to make a representation in writing within such reasonable time as may be specified in the notice and he must be given reasonable opportunity of being heard in the matter.”

7..... Giving of the notice contemplated by Section 124 of the Customs Act and Section 79 of the Gold Control Act means that the notice must have been received because as pointed out by the Supreme Court in *Narasimhiah’s* case, AIR 1966 SC 330 (supra) the giving of the notice is not complete unless and until it reaches the person concerned or its actual tender to him. Merely dispatching of the notice to the address of the person does not, complete the giving of the notice. In the instant case, therefore, the fact that the respondents dispatched the notices by post on November 5, 1968 would not complete the giving of the notice. The giving of the notice should have been complete on or before November 6, 1968 i.e., notices should have reached the



petitioner on or before November 6, 1969 or should have been tendered to him before that date. That was not done in the instant case and, therefore, as from November 7, 1969, the civil right to get back the seized goods accrued to the petitioner.”

Relying on these two judgments, Justice Ahmed in *Purushottam*

Jajodia held:

“25. While the Madhya Pradesh High Court was right in observing that the object of Section 110(2) and Section 124(a) of the said Act read together was to apprise the concerned person of the grounds on which the confiscation of the goods or imposition of penalty was proposed, with respect, it was wrong when it concluded that when the legislature had used the “words” “notice is given” it would “obviously mean that the notice must be issued within six months of the date of seizure”. In our view, the expression “notice is given” does not logically translate to the conclusion that “notice must be issued within the stipulated period”.

26. For the above reasons, we do not agree with the view taken by the Calcutta High Court in *Kanti Tarafdar* (supra) which has been followed by some other High Courts. We find ourselves to be in entire agreement with the view taken by the Gujarat High Court in *Ambalal Morarji Soni* (supra) which has correctly placed reliance on the Supreme Court decision in *K. Narasimhiah* (supra).

27. Consequently, as none of the petitioners reviewed the notices under Section 124(a) of the said act within the time stipulated in Section 110(2) thereof, the writ petitions are allowed and the respondents are directed to release the goods including the currency seized from the petitioners forthwith, unconditionally. There shall be no order as to costs.”

Following and applying these authorities, it is plain that the meaning to be ascribed to the words “giving” notice under Section 110(2) is nothing else than proper service of a notice under Section 124 of the



Customs Act, 1962 physically or electronically on the owner of the goods containing the grounds on which it is issued and which he is required to answer.

Now, the seizure of the gold items was made on 4th April, 2023. The show cause notice under Section 124 was signed and issued within the period of six months on 3rd October, 2023. It was posted on 5th October, 2023 and delivered on 10th October, 2023. Hence, the giving of notice under Section 110(2) took place beyond six months. Although the appellant authorities were free to adjudicate upon the show cause notice, the proceedings would have to continue subject to release of the goods to its owner.

The goods were not released and the respondent had to approach this Court by the instant writ.

On 5th April, 2024, the impugned judgment and order was passed directing release of the goods. The present appeal was filed on 3rd May, 2024. On 9th May, 2024, this Court in the exercise of its appellate jurisdiction directed retention of the goods by the Customs authorities.

Now, on 25th November, 2024 the adjudication proceedings under Section 124 of the said Act concluded by an order passed by the Customs



authorities for confiscation of the goods. There was no provision for redemption of the goods by the respondent.

The simple argument made by learned counsel for the respondent is that since show cause notice was not served on the respondent within six months, he was entitled to return of the goods. Learned counsel for the appellants submits that since the confiscation order has been passed and there is no provision in this confiscation order for redemption of the gold items by the respondent, they have become the property of the Union of India.

On the basis of the law which I have discussed, the respondent became entitled to return of the seized goods on 4th October, 2023. The appellant authorities did not release the goods. Now, if as a subsequent event a confiscation order was passed that order would operate on the goods wherever they were situated. This subsequent confiscation order has got nothing to do with the cause of action involved in the writ petition and appeal. It is an independent right acquired by the appellant authorities to be exercised independently.

So, in my opinion the appellants are obliged to immediately return the goods to the respondent subject to the confiscation order. In other words, even if it is assumed that by virtue of confiscation, the ownership



of the goods has been transferred to the appellants, still its possession status quo ante which was to be with the respondent has to be restored until the confiscation order is enforced.

We dispose of this appeal by affirming the judgment and order of the learned single judge made on 5th April, 2024. We direct the appellants to return the seized gold to the respondent within four weeks of communication of this order. We also make it clear that on the subsequent events, the appellants are free to take such steps with regard to the goods, as they may be advised. All interim orders are superseded by this final judgment and order.

MC (WA) No. 14 of 2024 is also disposed of by this judgment and order.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

Meghalaya
18.02.2025
“Lam DR-PS”