

(1987) 09 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 527 of 1987

Arvinder Singh

APPELLANT

Vs

Collector of Central Excise and Another

RESPONDENT

Date of Decision : 10-09-1987

Acts Referred:

Customs Act, 1962 — Section 110(1), 110(2), 111, 112, 124
Gold (Control) Act, 1968 — Section 79

Citation : (1988) 33 ELT 642

Hon'ble Judges : V.K. Mehrotra, J; R.R. Mishra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. On August 1, 1986, Officers of Central Preventive Party, Allahabad took search of the shop situate at 30, Mohd. Ali Park, Allahabad. They recovered 20 pieces measuring 76.5 meters of synthetic fabrics of foreign origin valued at Rs. 3,502/-. Petitioner Arvinder Singh, the shop keeper, could not produce any proof that he had imported them legally or was in possession thereof in accordance with law. The recovered goods were, therefore, seized the same day.

2. A show cause notice dated January 30, 1987 was then issued to Arvinder Singh asking him why the 20 pieces measuring 76.5 meters of synthetic fabrics of foreign origin seized on August 1, 1986 be not confiscated u/s 111 and a penalty imposed u/s 112 of the Customs Act, 1962. This notice was despatched to Arvinder Singh by registered post on February 5, 1987 from the office of the Assistant Collector, Central Excise Division, Allahabad. It was received by Arvinder Singh on February 10, 1987. A reply was given by Arvinder Singh to it on March 20, 1987 which was followed by a reminder dated April 6, 1987. It was mentioned by Arvinder Singh, apart from other facts, that the show cause notice had not been delivered to him within six months from the date of seizure, which was necessary u/s 110(2) of the Act, and, therefore, the goods seized from his shop on August 1, 1986 may be released immediately. The goods were, however,

not released. Arvinder Singh then approached this Court through the present writ petition on 16-7-1987 for redress. A copy of the show cause notice is Annexure-1 to this petition while a copy of the reply in reminder dated April 6, 1987 is Annexure - 2 to it.

3. A counter affidavit sworn by Shri V.S. Samant, Assistant Collector, Central Excise, Allahabad, has been filed on behalf of the respondents in the case. The petitioner has also filed a rejoinder-affidavit.

4. We have heard learned counsel for the parties and we propose to dispose of the petition finally today.

5. In paragraph 5 of the counter-affidavit it has been stated that a show cause notice dated January 30, 1987 was issued to the petitioner by sending it by registered post on February 5, 1987. It is obvious that the notice actually left the office of the second respondent beyond a period of six months from the date on which the goods were seized from the petitioner's shop.

Section 110(2) of the Customs says that :

"Section 110(2) of the Customs Act, 1962:

"Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (2) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whom they were seized,

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months."

6. It is not the case of the respondents in the counter-affidavit that the period of six months mentioned in Section 110(2) was extended by the Collector, Customs under the proviso to the aforesaid Section. It is clear that there is a breach of Sub-section (2) of Section 110 of the Act insofar as it relates to the period within which the respondents were under an obligation to give notice to the petitioner. As such, the retention of the goods, which had been seized from the petitioner's shop on August 1, 1986, has become illegal.

7. In Assistant Collector of Customs Vs. Charan Das Malhotra, it was observed by the Supreme Court in paragraph 11 of the judgment that :

"As already stated, Sub-section (1) of Section 110 authorises seizure, the only requirement being a reasonable belief on the part of the concerned officer at the time of seizure. The power of seizure founded on a more reasonable belief being obviously an extraordinary power, second Sub-section envisages completion of the enquiry within a period of six months from the date of seizure. But it provides that, if such an enquiry is not completed within that period and a notice u/s 124(a) is, therefore, not given, the person from whom the goods are seized become entitled to their restoration...."

8. Relying on the principle laid down by the Supreme Court in the said decision, a Division Bench of this Court, while dealing with a seizure u/s 79 of the Gold Control Act, 1968 (of which provisions are in pari materia) held that :

"It is significant that the statute requires that the notice must be given within six months which clearly implies that the notice u/s 79 has to be delivered within six months and not merely despatched within six months...."

These decisions indicate unmistakably that in case notice is not given to the person from whom the goods are seized within six months of the date of seizure, that person becomes entitled to the return of the goods, except where the period is duly extended under the proviso to Section 110(2).

9. Since learned counsel for the petitioner has confined his submission before us today only to this aspect of the matter, it is not necessary for us to deal with any other question raised in the petition.

10. With the aforesaid observations, the writ petition is finally disposed of. Costs on parties.