
(1976) 08 CAL CK 0021
In the Calcutta High Court
Case No : C.R. 3330 (W) of 1972

Jayantilal Morakhia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-08-1976

Acts Referred:

Customs Act, 1962 — Section 110, 110(2), 124, 153
General Clauses Act, 1897 — Section 27

Citation : 82 CWN 270

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : N.C. Banerjee, M.A. Razack and Manabendra Kumar Nag, for the Appellant; P.N. Chandra, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Basu, J.—The point involved in the present application lies within a narrow compass. The petitioner Jayantilal Morakhia carries on business under the name and style of Morakhia Trading Company at 44, Ezra Street, Calcutta on the 9th June, 1970 certain documents, wrist watches and some currency notes were seized from the petitioner's office by the customs authorities. Thereafter a notice to show cause why the seized goods should not be confiscated was issued by the Customs authorities on the 27th November, 1970. According to the petitioner, the said notice was received by him on the 20th March, 1971.

2. Before the receipt of that notice however personal hearing was given to the learned advocate of the petitioner on several dates and ultimately on the 13th January, 1972 the Additional Collector of Customs passed an order confiscating the seized goods and the currency notes and also imposed a personal penalty of Rs. 5,000/-.

It is this order of confiscation which is challenged before me in this application.

3. The learned advocate appearing on behalf of the petitioner contended before

me that the order of confiscation is bad as the notice to show cause was given beyond the time prescribed by law and consequently it was incumbent on the customs authorities to return the goods seized to the petitioner.

4. In support of this contention reliance was placed on Section 110 of the Customs Act, 1962 (hereinafter referred to as the Act). Sub-section 2 whereof provides as follows :--

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 Collector of Customs for a period not exceeding six months.

5. In the present case admittedly the goods were seized on the 9th June, 1970. The notice to show cause was issued on the 27th November, 1970 within a period of six months from the date of the seizure. But according to the petitioner it was received by him after the expiry of six months. Consequently, it was contended that in terms of Section 110 (2) of the Act which I have just quoted above, it was incumbent on the authorities to return the seized goods to the petitioner. Admittedly, there was no extension of time by the Collector of Customs.

6. In the affidavit-in-opposition filed on behalf of the Customs authorities, it has been stated in paragraph 12 that the show cause notice was issued to the party on the 27th November, 1970 by registered post. But it was not received by the petitioner and the postal authorities returned it with the remark, "out of Calcutta--hence left".

7. Mr. P. N. Chunder, learned advocate appearing on behalf of the Customs authorities contended that the notice in the instant case was served within the time prescribed by law. In support of this contention Mr. Chunder relied on Section 153 of the Act which provides as follows:

Any order or decision passed or any summons or notice issued under this Act, shall be served--

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

8. It is submitted on behalf of the respondents that since the notice in the instant case was sent by registered post within the period of six months from the date of the seizure, it should be held to be in compliance with the provisions of the Act. Strong reliance was placed in this connection on a decision of the Madras High Court in the case of B. Bhoormal Tirupati v. The Additional Collector of Customs,

Custom House, Madras, reported in AIR 1974 Mad 224. In that case, an identical question came up for decision before a Division Bench of the Madras High Court. It was held by Kailasam, J. who delivered the judgment of the Division Bench that Section 153 of the Act requires that a notice shall be served by sending it by registered post to the person for whom it is intended. It does not require that effective service should be effected on the person receiving it. Read with Section 27 of the General Clauses Act it becomes clear that when a document to be served is sent by registered post to the proper address with pre-paid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Where a notice u/s 124 of the Act was sent within six months by a properly addressed pre-paid registered letter and it was returned with the endorsement "left" it was held that the endorsement was not sufficient to prove the contrary and the notice was deemed to have been effectively served within six months as required by Section 124 of the Act, read with Section 110 (2) thereof. With respect I am in entire agreement with their Lordships of the Madras High Court. The facts in that case, as I have already said, are almost identical with the facts of the present case. That being so, I am of the view that the notice in the instant case was served within the statutory period of six months and the order of confiscation of the seized goods cannot be challenged on that ground. The contention on behalf of the petitioner therefore fails.

In the result, this application fails and is dismissed. The Rule is discharged. All interim orders are vacated. There will be no order as to costs.