

**(2015) 04 KAR CK 0381**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 35408/2014 (T-TAR)

K. Abdulla Kunhi Abdul Rahaman

APPELLANT

Vs

Additional Commissioner of Customs and Others

RESPONDENT

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**Date of Decision :** 22-04-2015

**Acts Referred:**

Customs Act, 1962 — Section 108, 110, 110(1), 110(1A), 110(1B)  
Gold (Control) Act, 1968 — Section 79

**Citation :** (2015) 4 AKR 283 : (2015) 35 GSTR 365 : (2015) ILR (Kar) 5032

**Hon'ble Judges :** Aravind Kumar, J

**Bench :** Single Bench

**Advocate :** Nagendra Murthy M. for V.R. Balasubramani, for the Appellant;  
Jeevan J. Neeralgi, Advocates for the Respondent

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## **Judgement**

Aravind Kumar, J—Heard Sri. Nagendra Murthy M. learned counsel appearing on behalf of Sri. V.R. Balasubramani for petitioner and Sri. Jeevan Neeralagi, learned panel counsel appearing for respondents.

2. Petitioner is praying for quashing of communication/letter dated 05.06.2014, Annexure-F, issued by third respondent, contending inter alia that non issuance of notice under Section 124 of Customs Act, 1962 (for short the "Act") within the period prescribed under Section 110(2) of the Act has given right to the petitioner to seek for return of seized goods and as such, petitioner is contending retention of seized goods (gold) by the respondents is illegal and they are to be returned to petitioner as prayed for and rejection of petitioner's claim is bad in law.

3. The factual matrix which has given rise to filing of this writ petition can be crystallised as under:

The Directorate of Revenue Intelligence ("DRI" for short) on receipt of specific intelligence input that one Sri. K. Abdulla Kunhi Abdul Rahaman, resident of Kannikkad House, No. 05/386, Alampady, Kallakkatta Post, Kasargode District

would be arriving at Bengaluru by Air India Flight No. A1 994 on 16.09.2013 and would attempt to smuggle gold without payment of applicable customs duty, had intercepted said passenger namely petitioner herein while he was attempting to exit himself through Green Channel of customs area and on verification of travel documents by the DRI Authorities it was found that petitioner was a holder of Indian Passport on whom they had specific intelligence input and on examination of baggage, which was carried by petitioner and on same being scanned, it was found from his personal search that two chits were recovered from his upper shirt pocket revealing two other persons by name Sri. Haneefa and Sri. Abdul Khader were traveling along with him and on enquiry by DRI Officers petitioner is said to have conceded before authorities that he had brought gold biscuits from Dubai to Bengaluru via Goa through two domestic passengers namely, Sri. Haneefa and Sri. Abdul Khader, who had accompanied him in the same flight and were given pair of shoes during the flight and were asked to wear said shoes which sole was said to be concealed with a smuggled gold biscuits.

4. The DRI Officers with the assistance of petitioner intercepted above said two domestic passengers also at the exit of customs Green Channel area and after verification and enquiry and body search being conducted, as agreed to by them, they handed over a pair of black coloured bata shoes, which is said to have handed over to them by petitioner and had been requested to wear the same and on examination of said shoes it was found that it contained a cavity at the sole area concealing four wrapped black coloured plastic papers and on being cut open, it was found that three gold biscuits weighing 116.6 grams each was concealed and one cut piece weighing 63.76 grams with foreign markings upon them. Likewise, on opening of other shoes also gold biscuits were found not only from Sri. Haneefa but also from Sri. Abdul Khader. Accordingly, mahazar came to be drawn and statement of petitioner and other two persons came to be recorded under Section 108 of the Customs Act, 1962.

5. Notice under Section 110(2) of the Act came to be issued on 13.03.2014 to petitioner herein as to why said gold biscuits with foreign markings seized under the mahazar dated 16.09.2013, which was smuggled into India as indicated in the mahazar should not be confiscated under Section 111(d), 111(l), 111(m) of the Act. Apart from confiscation of material used for packing and concealment in terms of Section 118(a) and 119 of the Act and apart from levying penalty on petitioner and two others and confiscation of the seized gold items also under Section 114AA of the Act vide Show Cause Notice dated 13.03.2014 referred to hereinabove at Annexure-A. It is the contention of learned counsel appearing for petitioner that petitioner had factually received Show Cause Notice on 17.03.2011, as per Annexures-B and C, which was beyond the period of six months stipulated under Section 110(2) of the Act. It is contended that on several representations made to the Authorities by petitioner to return the seized goods on the ground that show cause notice was not issued within six (6) months from date of confiscation, a reply is said to have been furnished by third respondent vide Annexure-F intimating the petitioner that Show Cause Notice

issued on 13.03.2014 is within the period of six months as per Section 110(2) of the Act and petitioner was called upon to reply to the Show Cause Notice to the adjudicating authority as mentioned in the Show Cause Notice.

6. It is the contention of learned counsel appearing for petitioner that Show Cause Notice issued under Section 110(2) of the Act dated 13.03.2014 ought to have been served on the petitioner within six months from the date of seizure (16.09.2013) and show cause notice was factually received by the petitioner on 17.03.2014 as evidenced from the postal seal found in Annexures-B and C and as such, prescribed period of six months namely period stipulated under Sub-section (2) of Section 110 of the Act being violated petitioner would be entitled to seek for return of seized goods and as such it is contended that petitioner is entitled for relief sought for in the writ petition.

7. He would elaborate his submission by contending that authority who issued the show cause notice has not put the petitioner on notice to show sufficient cause for extension being granted and when there is no such attempt made by the departmental officers to extend the period of six months prescribed under the Act, petitioner would be entitled to return of the seized gold unconditionally. In support of his submission, he has relied upon the following judgments:

1. K. Rama Rao Vs. Additional Collector of Customs, Calcutta and Another, (1983) 14 ELT 2267
2. D. Sengupta Vs. Collector of Customs and Others, (1987) 13 ECC 175 : (1987) 13 ECR 165 : (1987) 31 ELT 30
3. Biplab Rakshit Vs. Collector of Customs, (1996) 88 ELT 654
4. Shyamlata Sharma vs. Collector of Customs 1990 (28) ECR 395
5. Arvinder Singh Vs. Collector of Central Excise and Another, (1988) 33 ELT 642
6. Kantilal Somehand Shah and Another Vs. Collector of Customs and Central Excise and Another, (1985) 4 ECC 41 : (1982) 10 ELT 902
7. Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, (2008) 1 CLT 709 : (2008) 1 CTC 707 : (2008) 124 ECC 1 : (2008) 150 ECR 1 : (2008) 221 ELT 163 : (2007) 14 SCALE 610 : (2008) 3 SCC 70 : (2008) 12 VST 542 : (2008) AIRSCW 1461 : (2007) 8 Supreme 533 .
8. Per contra, Sri. Jeevan J. Neeralgi, learned counsel appearing for the respondent would support the impugned show cause notice and contends that the same is in consonance with Section 110(2) of the Act and the said provision has to be read in consonance or conjointly with Sections 124(a) & 123 of the Customs Act and when so read, it would clearly indicate that issuance of show cause notice is within the period of six months as prescribed under Section 110(2) of Act which mandates issuance of such notice before expiry of the period of six months and the authorities, if for any reason, are unable to issue such notice within six months and intend to extend the period of seizure beyond six

months, such authority would be entitled to extend the period by a further period of six months and in the event of show cause notice not being issued for confiscating the seized goods either within the period prescribed under Section 110(2) of the Act or within the extended period of further six months, order of seizure would become nullity or void and the only consequence which would fall is, it enables the person from whose possession the goods were seized to seek for return of said seized goods and he would contend that if on the other hand a show cause notice is issued within the period of six months or the extended period of six months (12 months in all) the remedy available to such person is to reply to such Show Cause Notice and such person would not get an automatic right to seek for return of the goods if such show cause notice is issued in accordance with sub-section (2) of Section 110 of the Act. Hence, he prays for dismissal of the writ petition.

9. Having heard the learned Advocates appearing for the parties and on perusal of the records, this Court is of the considered view that question which arises for consideration in this Writ Petition is with regard to validity of show cause notice dated 13.03.2014 issued to petitioner under Section 110(2) of the Customs Act, 1962 and validity of communication dated 5.6.2014-Annexure-F.

10. The relevant provisions of Customs Act, which have bearing on this issue in question which requires to be noticed namely, Sections 110, 123, 124(a) and 153 and as such they are extracted herein below:

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 manners the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(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 proceeding 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

(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 aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of customs for a period not exceeding six months.

123. Burden of proof in certain cases.--(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be--

(a) in a case where such seizure is made from the possession of any person,--

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify.

124. Issue of show cause notice before confiscation of goods, etc.--No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person--

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause

(b) may at the request of the person concerned be oral.

153. Service of order, decision, etc.--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.

11. A bare perusal of Section 110(2) of the Act would indicate giving of notice as contemplated under Section 124(a) of the Act within six months from the date of seizure of goods is a condition precedent to retain the seized goods by the department and in the absence of such notice being issued to the owner or the person from whose possession goods were seized are to be returned.

12. Section 110(1) of the Act has been incorporated in the present Customs Act which was conspicuously absent under the Old Customs Act, 1878. If upon reasonable belief that certain goods are liable for confiscation, an officer of the custom is empowered to seize such goods from such person. The power of seizure is available to the proper officer if he has reason to believe. If the goods so seized are perishable or its value would deplete due to passage of time or there being constraints for its storage, the Central Government is empowered to issue notification specifying the goods or class of goods for disposing of such goods as per Section 110(1A) and proper officer after following the procedure prescribed under Section 110(1B) would be empowered to take steps to dispose of the goods seized. However, if the proper officer has reason to believe such goods are liable to confiscation, he may seize such goods and shall thereafter issue notice within Six (6) months from date of such seizure as otherwise seized goods will have to be returned. The object underlying Section 110(2) of the Act is not initiation of proceedings for confiscation of goods or for imposition of personal penalty, but it would indicate as to what consequences would follow if no notice is issued under clause (a) of Section 124 within the time prescribed under Section 110(2). The consequence of non-initiation of proceedings within the time set out in the Section would result in return of the goods from whom they were seized. It would indicate that failure to show cause under clause (a) of Section 124 of the Act within the prescribed time of six (6) months will only result in obligation on the part of the proper officer to return the goods to the person from whose possession they were seized. There is nothing in Section 110 of the Act which would indicate that a fetter or limitation is imposed upon the power of the competent authority to initiate proceedings under Section 124 of the Act. On the other hand, Section 124 is a substantive provision relating to confiscation of goods and imposition of penalty. Under Section 124 of the Act issue of Show Cause Notice prior to the passing of an order of confiscation or imposition of penalty is mandatory. The language employed in Section 124 of the Act is clear and precise and no restriction or limitation or even a fetter is imposed

as regards the time when proceeding may be initiated by issue of a Show Cause Notice. A plain reading of Section 124 of the Act would indicate that competent officer would be empowered to pass an order of confiscation of goods or imposition of penalty on any person after issuing a notice in writing informing the grounds on which it is proposed to confiscate the goods or impose a penalty. Section 124 of the Act only prescribes the conditions, which will have to be fulfilled by such authority before the order of confiscation of goods or order imposing penalty can be passed against any person. These conditions are laid down in clause (a) to (c) and the owner of the goods against whom order of confiscation is being passed or such person who is liable to pay penalty is to be given notice in writing informing the ground on which it is proceeding to confiscate the goods and/or impose the penalty on the owner of the goods or person from whom goods were seized by extending an opportunity to submit a representation in writing, within such reasonable time as may be specified in the notice itself. However, the owner or such person is also to be extended a reasonable opportunity of being heard in the matter. A perusal of these three conditions prescribed under Section 124 of the Act does not even remotely suggest that there is any restriction or limitation or even a fetter as regards the time within which proceedings may be initiated by issue of a show cause notice.

13. In other words the only consequence which follows on failure to give notice under clause (a) of Section 124 of the Act within six months of the seizure of the goods would only result in return of the goods from whose possession they were seized as is clear from Section 110(2). Thus, it will have to be seen from facts of each case as to whether notice as prescribed under sub-section (2) of Section 110 was issued to the person from whose possession of goods were seized and whether such notice is within the time limit prescribed under sub-section (2) of Section 124 and if not whether owner or person from whose possession the goods were seized is entitled for return of goods.

14. It would be apt at this juncture itself to refer to the decisions relied upon by the learned counsel appearing for the petitioner namely in the case of *Purushottam Jajodia Vs. Directorate of Revenue Intelligence*, (2014) 307 ELT 837 whereunder the interpretation of the words contained in sub-section (2) of Section 110 and Section 124(a) of the Act came to be considered. It has been held that mere dispatch of notice would not amount to "giving" of notice and the words "giving" as found in sub-section (2) of Section 110 of the Act would be complete only when such notice has reached the person concerned or if such notice after being tendered had been refused. The said judgment of the Delhi High Court is undisputedly pending adjudication before the Hon'ble Apex Court in Civil Appeal No. 3122/15.

15. A perusal of the said judgment would indicate that judgment rendered by the Hon'ble High Court of Madhya Pradesh in the matter of *The Commissioner of Central Excise and Others Vs. Ram Kumar Aggrawal*, (2012) 280 ELT 13 : (2011) ILR (MP) 877 has been distinguished. The High Court of Madhya Pradesh in *Ram*

Kumar Aggarwal's case while interpreting Sections 110(2) and 124 of the Act has held issuance of Show Cause Notice by registered post before the expiry of six (6) months from the date of seizure would be sufficient compliance more particularly when the same is received by the addressee though after lapse of six (6) months. It has been further held that neither Section 110(2) nor clause (a) of Section 124 of the Act contemplates service of notice in strict sense should be within a period of six months. It is submitted that judgment rendered by the High Court of Madhya Pradesh has since been affirmed by the Hon''ble Apex Court in Special Leave Petition (Civil) No. 28186/2011 by judgment dated 21.10.2011. Thus, judgment rendered by the Madhya Pradesh High Court in Ram Kumar's case has reached finality and in the judgment rendered by the Delhi High Court appeal is yet to be disposed of by the Hon''ble Apex Court. Hence, this Court is of the considered view that judgment rendered by the High Court of Madhya Pradesh in Ramkumar's case referred to supra is more persuasive than the judgment rendered by the Delhi High Court and as such contention raised by learned counsel for petitioner to consider the case of Purshottam Jajodia rendered by Delhi High Court cannot be accepted.

16. Show Cause Notice dated 13.3.2014-Annexure-A issued to the petitioner in the instant case and its confirmation dated 5.6.2014-Annexure-F issued by third respondent would clearly indicate that Show Cause Notice-Annexure-A came to be issued within a period of six months from the date of seizure of goods as contemplated under Section 110(2) of the Customs Act.

17. Section 110(2) indicates where goods are seized under section 110(1) and no notice in respect thereof is given under Section 124(a) within six (6) months of the seizure, such goods are to be returned under Section 124(a) of the Act. No confiscation of goods imposition of penalty can be passed or levied without issuance of notice in writing unless waived by person concerned. In the instant case goods came to be confiscated by the proper officer on 16.09.2013. Show cause notice came to be issued on 13.03.2014 i.e., before expiry of six months period prescribed i.e., before 15.03.2014. Postal cover under which show cause notice-Annexure-A was dispatched has been produced along with writ petition at Annexure-B and same would disclose it has been dispatched by the Office of DRI, Palarivattom, Kochi on 13.03.2014 itself and petitioner is undisputedly a resident of Kerala State and said postal cover also bears the postal seal dated 15.03.2014. Thus, petitioner cannot be heard to contend that postal article containing show cause notice-Annexure-A was actually delivered to him only on 17.03.2014 and six (6) months time limit prescribed under Section 110(2) of the Act had lapsed by the time show cause notice was delivered and therefore he would be entitled to return of seized goods.

18. Section 153 of the Act provides that notice issued under the Act should be served in the manner as provided under said Section. It does not even remotely suggest that such person should be served with such notice to hold service of notice as complete. Dispatching of notice by registered post would constitute a

valid service. Clause (b) of Section 153 of the Act also provides that in case tendering of summons or sending the notice by registered post is not feasible or possible, then such service can also be effected by affixing the notice on the notice board. Thus, Section 153 controls Section 110(2). Thus, date of sending or dispatching the notice by registered post is the date of giving the notice as contemplated under Section 110(2) of the Act.

19. Though Delhi High Court was persuaded by the dicta laid down by the Apex Court in the case of Jayanthi for construing the plain and simple meaning of the word "given" to extend the said meaning to sub-section (2) of Section 110, the High Court of Madhya Pradesh has taken note of the fact that Hon"ble Apex Court was not construing the word "given" as used in Customs Act, 1962 and found that Hon"ble Apex Court was dealing with giving of notice of a meeting as provided for under Section 27(3) of the Mysore Town Municipality Act, 1951 and found that said provision was not controlled by any other provision in the Act. This reasoning adopted by the Madhya Pradesh High Court is more persuasive inasmuch as the word used "given" in sub-section (2) of Section 110 of the Customs Act, 1962 has to be read harmoniously or conjointly with the words found in Section 153 of the Act which provides or enables the authorities to effect service of order, decision and notice to be issued under the Act by tendering it through registered post or by affixture where it is not possible or feasible to be served in the manner provided in clause (a) of Section 153 i.e., by affixing it on the notice board of the customs house.

20. Thus, a conspectus reading of Section 153 of the Act would clearly indicate that it does not contain the word "given" as found in Section 110(2) or 124 of the Act. It is well settled proposition of law that true meaning of the words and expressions used by the legislature must be given effect to and courts must have regard to the aim, object and scope of the object to be achieved while interpreting the words used in a statute.

21. The select committee while recommending repeal of Sea Customs Act, 1878 and for introducing the Customs Act, 1962 in their report have observed to the following effect:

"The committee are of the view that if any goods are seized proceedings in the nature of Show Cause Notice should be started within six months of the seizure but this period may be on sufficient cause being shown to be extended by the Collector for Customs for a further period of six months. If Show Cause Notice is not issued within a specified period, the goods should be returned to the person from whom they were seized. The Committee also feels that in order to ...in himself or inconvenience to a person from whom the documents are seized, he should be entitled to make copies thereof or take extracts therefrom."

22. Keeping this report in mind, the legislature while enacting sub-section (2) of Section 110 in the 1962 Act has consciously used the word "given". It has been opined in the report that proceedings "should be started" in six (6) months.

Hence, words "given" used in Section 110(2), 124 and Section 153 should be read conjointly. The object in setting the time limit under Section 110(2) of the Act was not to harass the citizen from whom goods have been seized and keep the kettle boiling, but to ensure that proceedings are commenced or started within six (6) months from date of such confiscation.

23. Section 79 of the Gold Control Act which is similar to Section 110 of the Customs Act would indicate that the purpose of issue of notice is two fold namely: (i) to intimate concerned person the grounds on which confiscation is proposed; and (ii) to give opportunity to the concerned person for making a representation against such confiscation. In the event of authorities making up their mind to confiscate goods, they will have to issue a notice under Section 124(a) within a period of six (6) months of such seizure as required under Section 110(2) and on such failure the goods so seized will have to be returned to the owner or to the person from whom it was seized. In this background the period of six months has been prescribed by the Legislature, to enable the authority concerned to make out a prima facie case for confiscation of the goods already seized. In other words, if the authority fails to make up its mind to confiscate the goods within six months from the date of its seizure, such goods are required be returned to the person from whose custody they were seized. Thus, the object of Section 110(2) can be discerned from the very provision itself viz., in the event of the authorities intend to confiscate seized goods they are required to issue notices as provided under Section 124(a) of the Act and such notice should be given within six months from the date of seizure as prescribed under Section 110(2). Once the authority concerned intends to confiscate the goods so seized such authorities cannot sit idle and it has to make the concerned person aware of its intention of confiscating the goods so seized by issuance of notice within six (6) months or return the goods.

24. Thus, question would be how to issue or give such notice and what are the ingredients required to be adhered to by the authorities to ensure such notice is valid. In order to examine said issue Section 153 of the Act will also have to be looked into and it is the only provision under the customs Act which provides the mode and the manner under which effecting service of notice is provided. A reading of Section 110(2) of the Act would clearly indicate that the legislature while providing issuance of notice under Section 110(2) of the Act within the time specified thereunder did not provide mode or manner as to how such notice should be given, but at the same time it provided that a notice required to be issued under Section 110(2) should be a notice "as provided under Section 124(a) of the Act". "Any notice" issued under the Act would obviously include a notice issued under Section 124(a) of the Act and it should be served upon the owner or the person from whose possession the goods were seized by serving such notice in the manner provided under Section 153 of the Act. If the intention of the legislature was otherwise namely to provide for effectuating service of notice in a different manner, it would have said so in Section 153 itself. In the absence of any other provision indicating the mode and the manner of service of

notice the only provision which will have to be referred to would be Section 153 of the Act. It is in this background the words used in Section 153 namely "Any order or decision passed or any summons or notice issued under this Act" would acquire significance to hold that notice indicated under sub-section (2) of Section 110 would also encompass notice indicated in Section 153 of the Act. It has been held by the Madhya Pradesh High Court in the case of The Commissioner of Central Excise and Others Vs. Ram Kumar Aggrawal, (2012) 280 ELT 13 : (2011) ILR (MP) 877 by referring to the judgment of Calcutta High Court in the case of Union of India (UOI) Vs. Kanti Tarafdar, (1996) 53 ECC 16 : (1996) 63 ECR 160 : (1997) 91 ELT 51 to the following effect:

"13. We may successfully refer to the Division Bench decision of the High Court of Calcutta in the case of Union of India (UOI) Vs. Kanti Tarafdar, (1996) 53 ECC 16 : (1996) 63 ECR 160 : (1997) 91 ELT 51 . While dealing with Section 110(2), 124 and 153 of Customs Act, 1962, it has been observed:

28. Therefore, the real object of the notice under Section 110(2), which is required to be issued in writing as provided in Section 124 and which is required to be given within six months, is to give the authority concerned a time-limit of six months to make out a case for confiscation of the goods seized.

29. Once the authority concerned makes out a case for confiscation within the time-limit, it cannot sit idle. It has to make the concerned person aware of such case by giving the written notice. The question therefore is how to give such notice.

30. The only mode or manner of serving of notices issued under the Act has been provided in Section 153. The legislature in Section 153 of the Act gave a clear mandate that any notice issued under the Act should be served in the manner provided in the section.

31. The legislature, while providing that a notice under Section 110(2) must be given within the time as specified in the said section did not provide in the section itself as to how such notice should be given, but at the same time provided that a notice under Section 110(2) should be a notice "issued" under Section 124 of the Act and "any notice", issued under the Act," which obviously includes a notice under Section 124 of the Act, should be "served" in the manner provided in Section 153 of the Act. If the legislature intended that the manner and method of giving notice under Section 110(2) should be different, then it would not have provided in the said section the words "notice in respect thereof if given under Clause (a) of Section 124" and the words "Issue of show cause notice" in Section 124 of the Act and the words "Any...notice issued" in Section 153 of the Act.

32. It is also our duty to harmonise the provisions of the Act to find out the real legislative intent. If we fail in doing so and do not harmonise these three sections then we have to read in Section 153 "any notice", "except notice contemplated under Section 110(2), issued under the Act" shall be served in the manner

provided for in Section 153, which unfortunately, we cannot do as that will mean supplying of words in Section 153 even though there is no ambiguity in the section itself.

33. If that be so the notice as contemplated in Section 110(2) of the Act must be a notice to be issued under Section 124 of the Act and must be given in the manner as provided for in Section 153 of the Act and not in a manner or method not thought of by the legislature at the time of enacting the Act concerned.

34. Further, Section 110(2), though a mandatory provision, contemplates giving of a notice under Section 124, which is a general provision, while Section 153 provides the mode of giving of such notice, which is a special provision. Applying the maxim "*Generalia specialibus non derogant*", which means special provision will prevail upon general provision, we are of the view that special procedure for service of notice as provided for in the Act should prevail over the general enactment of giving of notice.

35. We, therefore, conclude that Section 153 of the Act controls Section 110(2) of the Act and a notice which is required to be given under Section 110(2) should be given in a manner provided in Section 153 and by no other means.

36. The word "serve" in legal connotation means to make legal delivery (a process or writ) on or upon (a person) or to present (a person) with a writ. (See the Shorter Oxford English Dictionary, re-print of 1988 at Page 1949). Therefore, is legal parlance serving is giving.

37. Under Section 153 of the Act, service is either by personal delivery (tender) or by putting it into transmission by registered post in case both are possible.

38. Thus, the logical conclusion would be that service of a notice will be complete either by tendering or by sending the same by registered post, since the legislature has equated both the situations by using the word "or".

39. In the event of the notice is tendered, the date on which the same was tendered should be taken as the date of giving of notice, but if the other option is exercised and the notice is sent by registered post the date of sending the notice should be the date of giving of notice as contemplated by Section 110(2) of the Act. Any other construction will render the legislative intent of equating tender with sending by registered post otiose.

25. Keeping these principles in mind, when facts on hand are examined, it would clearly indicate that seizure was done on 16.9.2013 and Show Cause Notice for confiscating the goods seized came to be issued on 13.3.2014 i.e., before period of six (6) months prescribed under sub-section (2) of Section 110 of the Act was to expire i.e., on or before 15.3.2014 and said Show Cause Notice dated 13.3.2014 Annexure-A came to be dispatched on the same day as is evident from the postal covers Annexures-B and C. However, it came to be delivered on the petitioner on 17.3.2014 i.e., after the expiry of two days of the period of six months prescribed under sub-section (2) of Section 110 of the Act. In that view

of the matter, the date of service of notice cannot be held as one which entitles the petitioner to seek for return of the goods on the ground that six months period prescribed under Section 110(2) of the Act had expired. At the cost of repetition it requires to be noticed that words used in Section 110(2) is "and no notice in respect thereof is given" it has to be construed to mean "date of dispatch of notice" inasmuch as, a conjoint reading of Section 110(2), Section 124(a) and Section 153 of the Act would clearly indicate that any notice which is required to be issued under the Act can be served by such authority either by tendering such notice to the addressee/notice in person or by sending/dispatching it by registered post and this exercise of issuing such notice should be undertaken before expiry of six months period. This precise exercise has been undertaken in the instant case as discussed hereinabove. In that view of the matter, contentions raised by the learned counsel for petitioner cannot be accepted.

26. Hence, I proceed to pass the following:

ORDER

(1) Writ petition is hereby dismissed.

(2) No order as to costs.