

(1983) 03 MAD CK 0014
In the Madras High Court
Case No : Writ Petition No. 256 of 1979

K. Rama Rao

APPELLANT

Vs

Additional Collector of Customs, Calcutta and Another

RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Customs Act, 1962 — Section 110(2), 124, 153

Citation : (1983) 14 ELT 2267

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : K.C. Rajappa, for the Appellant; T.R.K. Kumarsingh and K.N. Balasubramaniam, for the Respondent

Judgement

Nainar Sundaram, J.—The writ petition has to be allowed on a short legal ground advanced by the learned counsel for the petitioner. The

matter arises under the Customs Act, 52 of 1962, hereinafter referred to as the Act. Certain facts are not in dispute. On 16-9-1977, the officials of

the Customs department intercepted the petitioner when he, along with his employee, was about to leave Calcutta and seized ornamental gold of

the weight of 1005.800 grams, valued at Rs. 60,240, and cash in currency worth Rs. 14,670. According to the respondents, the seized goods are

liable for confiscation under the Act. S. 124 of the Act reads as follows -

124. 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 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.

2. Section 110(2) of the Act is relevant and it is extracted as follows -

110(2) Where any goods are seized under sub-sec, (1) and no notice in respect thereof is given under clause (a) of S. 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.

3. According the petitioner, he was not served with any show cause notice, as enjoined by the above provisions and hence, the goods are liable to be returned to him.

2. The respondents have filed a counter affidavit and there it is averred that show cause notices were sent by registered post with

acknowledgement due on 9-3-1978 to the petitioner as well as his employee and that while the postal acknowledgement due from the employee

has been received, neither the postal acknowledgement due was received from the petitioner nor the notice issued to him was returned unserved.

When the matter was heard earlier, Mr. K. N. Balasubramaniam, learned counsel appearing for the respondents, took time to verify as to whether

at least the postal receipt for having sent the show cause notice to the petitioner is available amongst the records. Time was granted to the learned

counsel for the respondents to do so. When the matter is taken up today, Mr. T. R. K. Kumar Singh, learned counsel appearing for the

respondents, admits that no such postal receipt is available amongst the records. However, learned counsel made an attempt to demonstrate that

such a show clause notice was, or must have been, in fact, sent. From the files, available with him, he drew my attention to a copy of a letter dated

17-3-1979 stated to have been addressed to the concerned Postal authority

enquiring about the fate of the alleged show cause notice issued by the authority concerned.

3. It must be straightway pointed out that the present writ petition was admitted on 25-1-1979 and rule nisi was issued on the same date. It is

admitted by the learned counsel for the respondents that the rule nisi was served on the respondents on 12-2-1979. Already, a contention has

been raised in the affidavit filed in support of the petition with regard to the non-issuance of the show cause notice. Hence, even assuming that such

a letter dated 17-3-1979 was sent to the said Post authority, it appears to be purely an afterthought and a self serving maneuver after the service of

the rule nisi, and I am not prepared to attach any significance to it. Further, it is admitted that no reply has been received from the Postal authority

for this alleged communication dated 17-3-1979. The question of issuance of show cause notice, which is a statutory mandate, the omission to

comply with which brings forth certain consequences ensuring to the benefit of the citizen, cannot be left in the field of ambiguity. Drastic

consequences do follow against the State for non-compliance of the statutory requirements with regard to the service of the show cause notice. If,

in fact, such a show cause notice was issued as claimed by the respondents on 9-3-1978, there is no explanation offered by the respondents as to

how the postal receipt got lost and they are obliged to make a desperate and a frustrated attempt to demonstrate that such a show cause notice

was issued by pointing out a copy of the letter dated 17-3-1979 which, even if true, had come to be issued after the issuance of the rule nisi in the

writ petition and service of the same on the respondents. Confiscation is a penal process and it is well settled that provisions relating to penal

process must be construed strictly and that too, in favour of the subject. In an attempt to get over the inconvenient position, learned counsel for the

respondents states that the procedure contemplated under S. 153(b) of the Act has been resorted to in the instant case. Averments to that effect

have been made in paragraph 9 of the counter affidavit wherein it is stated that a copy of the show cause notice was also displayed in the office

notice-board. It is not stated as to when exactly the display in the office notice-board was done. This is, apart from the question of the propriety of

resorting to Section 153(b) of the Act, on the facts of the case. This is a highly

unsatisfactory averment and does not bring conviction to the mind of the court on this aspect. As to the compliance with the provision of Section 153(b) of the Act, we can take it that there are certain formalities which the authorities cannot skip over. Vague statements without giving the requisite particulars have to be deprecated, especially when the authorities are enjoined to discharge the statutory functions. Learned counsel for the respondents drew my attention to the note made in the office file, stating that such a display was made on 14-3-1978. The matter of display is a statutory requirement as per Section 153(b) of the Act. The display in the notice board cannot be a matter of jotting in the file. Though it may not be necessary to delineate in extenso as to how the display should be done in due compliance with Section 153(b) of the Act, normally it is expected that sufficient copies of the show cause notice are taken and one such copy is displayed and another copy is preserved with the requisite endorsement made thereon by the concerned authority, who had actually displayed it on the notice-board. As stated above, there is no mention of the date of the display in the counter affidavit filed on behalf of the respondents. In the said circumstances, I am not prepared to attach any credence to this version, which is given in the course of the arguments on behalf of the respondents. These factors oblige me to accept the case of the petitioner that no show cause notice was issued within the time as required by the provisions of the Act. S. 110(2) of the Act itself is explicit when it states that when no show cause notice is given within the stipulated period, the goods shall be returned to the persons from whose possession they were seized, subject to the proviso which gives a further time of six months. It is not the case of the respondents that the proviso had come into play in the instant case, because their specific case is that the show cause notice was, in fact, issued on 9-3-1979, to the petitioner, which case, I find, cannot at all be accepted on the facts disclosed. This obliges me to interfere in writ proceedings and accordingly, the writ petition is allowed. There will be no order as to costs.