
(1993) 01 MAD CK 0036
In the Madras High Court

Katheeja Beevi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-01-1993

Acts Referred:

Customs Act, 1962 — Section 110, 124

Citation : (1993) 66 ELT 69

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Judgement

Venkataswami, J.—This writ petition is for the issue of a writ of mandamus directing the second respondent to return the sum of Rs.

16,100/- which was seized on 28-12-1985 in C. No. VIII/10/21/86-Cus. Adj. , dated 13-6- 1986 from the petitioner's premises bearing Door

No. 9, 14th Avenue, Harrington Road, Madras-31.

2. Brief facts are the following:-

On the basis of intelligence gathered, the Officers of the Directorate of Revenue Intelligence, Madras, along with the Officers of the Central Excise,

Madras, on 28-12-1985, searched among others the premises belonging Door No. 9, 14th Avenue, Harrington Road, Madras-31 (hereinafter

referred to as "the said premises"). As a result of the search of the said premises and others, the officers were able to recover cut and polished

diamonds, foreign currency, primary gold pieces, certain incriminating documents and also Indian currency amounting to Rs. 6,50,950/- Out of the

above said recoveries, we are now concerned with only a sum of Rs. 16,100/-. Admittedly, the said premises belongs to the third respondent,

son-in-law of the petitioner. It is not in dispute that the said sum of Rs. 16,100/-

was recovered from a room which was under lock and key at the time of search. It was broken open and the said amount of Rs. 16,100/- was seized along with two other items with which we are not concerned.

It is also common ground that the third respondent, who was present, informed the officers that particular room was in the occupation of his

mother-in-law, the petitioner herein, and that the amount seized from that room belonged to her. The petitioner was away, and, on return,

immediately she sent a representation on 21-2-1986, claiming the amount as hers and demanding return of the same. The representation sent on

21-2-1986 was duly received by the Department. Nevertheless, they have not cared to send any show cause notice to the petitioner before

proceeding further, but kept the amount with the Department. It is the claim of the petitioner that the said sum of Rs. 16,100/- is her own money,

and that the Department has no authority to keep the same without giving a show cause notice asking her to explain as to why that amount should

not be confiscated.

3. On the basis of the above averments in the affidavit, learned counsel for the submitted that in the absence of a show cause notice within the time

limit as prescribed u/s 110(2) of Customs Act, the respondents have no authority to keep the money and, therefore, liable to return the same. He

also submitted that right from the date of search and seizure, a consistent stand taken on behalf of the petitioner and later by the petitioner that the

said amount of Rs. 16,100/- belonged to the petitioner. In the absence of any material to make the respondents - Department believe that the said

sum of Rs. 16,100/- does not belong to the petitioner, the petitioner is entitled to the return of the same.

4. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel, in reply to the contention of the learned counsel for the

petitioner, submitted that the amount of Rs. 16,100/- is part and parcel of the Indian currency and other things recovered at Premises No. 9, 14th

Avenue, Harrington Road, Madras-31, in respect of which adjudication proceedings are pending. According to the learned counsel, the petitioner

can appear before the Adjudicating Authority and establish her claim. He also submitted that though a show cause notice as such was not served

on the petitioner, a copy of the same was marked to the petitioner and that is

sufficient compliance of Section 110(2) of the Customs Act. He also submitted that it was the reasonable belief of the Revenue that the entire sum of Indian currency namely, Rs. 6,50,950/- including the amount of Rs. 16,100/- seized from the said premises was sale proceeds of smuggled goods. Inasmuch as the premises belonged to the third respondent herein, a show cause notice was sent to the third respondent which also covered the sum now claimed by the petitioner. Therefore, in the light of the pendency of the adjudication proceedings, this Court may not pass any orders as regards the claim of the petitioner.

5. I have considered the rival submissions.

6. On the admitted facts, though the premises bearing Door No. 9, 14th Avenue, Harrington Road, Madras-31 belongs to the third respondent, it

is not in controversy that the room from which the seizure of Rs. 16,100/- was made, was in the occupation of the petitioner, during the relevant

period. It is also not in controversy that the room was kept under lock and key, and, in the absence of the petitioner at the time of search, it was

broken open by the search party, and the third respondent, without any loss of time, informed the search party that the room was in the occupation

of the petitioner and the money recovered from that room belonged to her. The matter does not stop there. The petitioner, on return to the house,

and on coming to know of the seizure of the amount, sent a representation on 21-2-1986, claiming the amount as hers and demanding the return of

the same. Though this was duly served on the concerned officer, the show cause notice dated 13-6-1986 issued long after this claim by the

petitioner and sent to the third and fourth respondents, did not call upon the petitioner to show cause why the said sum of Rs. 16,100/- should not

be confiscated. Instead, a copy of the show cause notice was marked to the petitioner along with 19 others. I am not able to agree with the

learned Additional Central Government Standing Counsel that the marking of a copy will amount to the issue of a show cause notice and thereby

sufficient compliance of Section 110(2) of the Customs Act, in the circumstances of the case. On the other hand, on the facts of this case, the

petitioner is entitled to a show cause notice. Likewise, when a consistent case has been made out right from the time of seizure till now, in the

absence of any material to suspect the claim of the petitioner, there is no

justification on the part of the respondents to retain the money. Section 110(2) read with Section 124 of the Customs Act fixed an outer limit for serving show cause notice as six months from the date of the seizure of the goods and that can be extended by another six months by an Order of Collector on sufficient cause being shown. In this case, the total period of one year is over long ago, and, in the light of Section 110(2) of the Customs Act, the petitioner is entitled to the return of Rs. 16,100/- as prayed for.

7. In the result, the writ petition is allowed. No costs.