

**(1975) 03 KL CK 0007**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 1873/74**

M. Mohammed

APPELLANT

Vs

Collector of Customs and C. Ex.

RESPONDENT

**Date of Decision :** 25-03-1975

**Acts Referred:**

Central Excise Rules, 1944 — Rule 226, 32(2), 40  
Customs Act, 1962 — Section 110, 110(1)

**Citation :** (1999) 110 ELT 451

**Hon'ble Judges :** K. Bhaskaran, J

**Bench :** Single Bench

**Advocate :** T.K. Kochu Thomman, for the Appellant;

## **Judgement**

K. Bhaskaran, J.—In this writ petition the petitioner seeks the issuance of a writ of certiorari quashing Exts. PI, P3 and P4. Ext. PI is a detention memo dated 3-7-1973 issued to the petitioner by the second respondent, the Superintendent of Central Excise, Preventative & Intelligence Unit, I.D.O., Kozhikode, Ext. P3 is the mahazar prepared by the Inspector of Central Excise, IDO, Kozhikode, dated 12-12-1973 for the seizure of six bundles of tobacco weighing 335.800 Kgs. Ext. P4 is the copy of a Notice No. V/4/15/96/73, dated 5-6-1974 issued by the 3rd respondent Assistant Collector of Central Excise, Integrated Division, Kozhikode to the Petitioner asking him to show cause why penalty should not be imposed on him under Rule 32(2), 40 and 226 of the Central Excise Rules, 1944, and why the six bundles of tobacco under seizure in respect of which the offence appears to have been committed should not be confiscated under Rule 32(2), 40 and 226 of the Central Excise Rules, 1944.

2. Dr. T.K. Kochu Thomman, Counsel for the Petitioner, submits that as the period of six months from 3-7-1973 on which date Ext. PI order was issued has elapsed and no extension of that period has been made as required under the provisions of Section 110 of the Customs Act, the respondents are not competent to retain possession of the goods, and are bound to return the same to the petitioner. On

behalf of the respondents it is argued that Ext. P1 is not really an order passed under the proviso to Sub-section (1) of Section 110 of the Act, as there is no reference to that proviso to that Sub-section, a statement that it was because it was found impracticable to seize the goods in question that the owner was ordered not to remove or otherwise deal with the goods. The Counsel for the petitioner submits that the only provision under which the second respondent could have passed an order in the nature of Ext. P1 was under the proviso to Sub-section (1) of Section 110 of the Act, and even though the provision of law under which the impugned order was passed has not been mentioned, there could be no doubt that the order was passed under the said provision. It is further argued by the Counsel that the order of detention virtually amounts to seizure, the only difference being that physical possession is not taken by the person entitled to effect the seizure; all the same, the dealer is not in a position to remove or deal with the goods, as there is restraint in regard to that. The argument of the Counsel is that the period of six months beyond which the detention or seizure could not be extended unless extended by another legally valid order, should be reckoned from the date of the order passed u/s 110, whether it be a detention under the proviso to Section 110(1) or an actual seizure u/s 110(1) of the Act. There seems to be considerable force in this argument. The Petitioner has made a representation to the first respondent on 18-8-1973, a true copy of which is Ext. P2. That representation has not yet been disposed of by the first respondent. I, therefore, direct the first respondent to dispose of Ext. P2 representation within a fortnight from the date bearing in mind that the petitioner has been deprived of the right to deal with the goods in question for nearly about two years by this time. No other direction appears to be necessary in this writ petition, and therefore this writ petition is disposed of with a direction to the first respondent to dispose of Ext. P2 representation, submitted by the Petitioner, within a fortnight from this date. The petitioner will be at liberty to approach this Court again if aggrieved by the order that might be passed by the first respondent on Ext. P2 representation. No. costs.