(1978) 01 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 116 of 1976

Mohammed Khalil APPELLANT

Vs

Collector of Customs (Preventive) RESPONDENT

Date of Decision : 06-01-1978

Acts Referred:

Customs Act, 1962 — Section 110(1), 110(2), 124

Citation : (1978) 2 ELT 171

Hon'ble Judges : Satish Chandra, J;K.C. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—On 17th March, 1975 the Customs Officer visited the business premises of the petitioner and seized 6,350 Kg. of tin sheets purporting to exercise powers u/s 110(1) of the Customs Act. Sub-section (2) of Section 110 provides that a notice u/s 124(a) must be issued within six months of the date of seizure otherwise the goods shall be returned to the person from whose possession they were seized. The notice has to inform the person of the grounds on which it is proposed to confiscate the goods or to impose penalty. The proviso to Sub-section (2) of Section 110 says that the aforesaid period of six months may on sufficient cause been shown be extended by the Collector of Customs for a period not exceeding six months.

2. In the present case on 12th September, 1975 the Collector of Customs issued a letter informing the petitioner that sufficient cause in the matter having been shown to him, he extended the period for the issue of show cause upto 10th November, 1975. The petitioner challenges the validity of this order.

3. According to the submission of the learned counsel for the petitioner no order extending the period of time for the issue of a show cause notice can passed validly without affording an opportunity of hearing to the person whose articles have been seized. This submission is directly supported by the decision of the

Supreme Court in Assistant Collector of Customs Vs. Charan Das Malhotra, . The Supreme Court in this case has held that the power under the proviso to Section 110(2) is quasi-judicial and at any rate one requiring a judicial approach. While the power of seizure under Sub-section (1) of Section 110 can be exercised on the basis of reasonable belief on the part of the concerned officer, the power of extending the period to notice u/s 124(a) is to be exercised only on "sufficient cause being shown". This expression envisages at least some sort of inquiry on facts placed before the authority and determination by him on those facts. Extension order is not to be passed mechanically. Admittedly no opportunity of showing cause against the proposal to extend the period of time was afforded to the petitioner. He was simply informed that the Collector was satisfied that there was sufficient cause and on that the period was extended. This action of the Collector in extending the period was illegal.

4. u/s 110(2) the period can be extended upto a maximum limit to six months only. That period of six months expired on 12th March. 1976, Now the Collector cannot, even if he wishes to adopt a proper procedure for extending the period to time, validly do so. The only ''aternative left to the Collector is now to return the seized goods to the petitioner.

5. In these circumstances the writ petition succeeds and is allowed. The impugned order dated 12th September, 1975 is quashed. The respondents are directed to forthwith return the seized goods to the petitioner. The petitioner will be entitled to the costs.

