
(2000) 08 AHC CK 0155

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 124 of 1999

Overseas Paints Linkers

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12
Customs Act, 1962 — Section 110(2), 124

Citation : (2001) 127 ELT 42

Hon'ble Judges : Onkareshwar Bhatt, J; M. Katju, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; S.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri A.P. Mathur, learned counsel for the petitioner and Sri S.K. Rai learned counsel appearing for the respondents.

2. This writ petition has been filed with a prayer for mandamus directing the respondents to release the seized goods which were seized from the possession of the petitioner on 4-11-1996.

3. The only point pressed by the learned counsel for the petitioner is that in view of Section 110(2) of "the Customs Act, 1962" the seized goods have to be released in favour of the person from whose possession the goods were seized. Section 110(2) of the said Act reads as follows :

"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 are 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."

4. u/s 12 of "the Central Excise Act, 1944" the provisions of Section 110(2) of "The Customs Act" have been made applicable to The Central Excise Act" by notifications dated 4-5-1963, as amended by notification dated 6-2-1965, 23-3-1968, 29-4-1968, 6-6-1995 and 2-9-1997.

5. In the present case seizure was made on 4-11-1996 whereas notice u/s 110(2) of "The Customs Act" is dated 2-5-1997 but was served on 7-5-1997, as stated in paragraph no. 5 of the writ petition. The allegation in paragraph 5 of the writ petition that the notice was served on 7-5-1997 has not been specifically denied in paragraph 22 of the counter affidavit and hence it has to be deemed to be correct.

6. It may be noted that Section 110(2) of "The Customs Act" mentions that the notice must be "given" within a period of six months from the date of seizure. The question arises whether the word "given" means "issuing" of the notice or "service" of the notice. This question has been answered by a Division Bench of this Court in Alka Watches Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, wherein it was held in paragraphs 11 and 12 that the word "given" used in Section 110(2) means "service" of the notice and not mere issuing of the notice.

7. There is no dispute that the period of six months mentioned in Section 110(2) has not been extended by the Commissioner. Hence, in our opinion, in view of Section 110(2) of the Customs Act which is a mandatory provision, the goods in question had to be released to the person from whose possession they were seized.

8. The writ petition is allowed. The respondents are directed to release the goods in question forthwith in favour of the person from whose possession they were seized. We make it clear that we only direct release of the goods in view of the specific provisions of Section 110(2) of The Customs Act, and it does not mean that adjudication penalty proceedings cannot go on. We make it clear that such proceedings can go on.