(2007) 12 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 6388 of 2007 and MP No. 1 of 2007

Pro Musicals APPELLANT

Vs

The Joint Commissioner of Customs (Preventive), Marine and Preventive Wing, The Commissioner of Customs, (Marine - Preventive) and The Commissioner of Customs (Air) RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:
Customs Act, 1962 — Section 110(2)

Citation : (2008) 124 ECC 169 : (2008) 150 ECR 169 : (2008) 227 ELT 182

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : M. Balagopal, for the Appellant; Ramakrishna Reddy, for Kalpa Reddy, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to a show cause notice issued by the first respondent in F. No. CIU/ii-01/06/42 dated

15.1.2007, and also a direction to release the detained goods unconditionally as required u/s 110(2) of the Customs Act 1962, is sought for by the

petitioner.

2. The affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

3. The case of the petitioner in short is that they are engaged in the import and trading of Digital Audio and music production equipments. They

imported the musical equipments through the Chennai Airport and had cleared it for home consumption after paying the necessary duty. They sent

a part of the legally imported duty paid goods having a market value of Rs. 2,26,000/-, to the dealer Sudeep Audio at Mumbai to be exhibited in the exhibition ""Palm India Expo 2006"" organised by M/s. Infocast Systems Pvt. Ltd. The goods were sent with a delivery challan dated

19.5.2006. The first respondent on 22.5.2006, came to the CST Mumbai Railway Station and detained the petitioner''s goods. The representative

of the petitioner and its associate in Mumbai have submitted the documents such as bill of entry, copy of the delivery challan, certificate of

participation in the exhibition, etc., on 26.5.2006 itself, to the respondents in Mumbai. However, the Officers of the respondents sought for written

statements. Accordingly, written statements of the petitioner and that of Auditya of Sudeep Audio were given on the very day. It was clearly stated

that the goods were meant for exhibition, and Sudeep Audio is the marketing associate of the petitioner concern. But, not satisfied with that, the

Superintendent of Customs (Preventive) working under the first respondent, again called for relevant documents vide letter dated 5.6.2006, which

they have replied on 8.6.2006. However, the Superintendent continued to ask for relevant documents. All the letters were suitably replied. While

the matter stood thus, the show cause notice was issued on 15.1.2007, after a lapse of 6 months, by the first respondent. Beyond the period

prescribed under the Act, it has been issued. Hence, the show cause notice which is hit by the provisions u/s 110(2) of the Customs Act 1962, has

got to be quashed. Apart from that, beyond that period, the goods could not be retained by the respondents, and it has got to be unconditionally

released. Hence, the orders have got to be quashed. Thus, the petitioner has come forward with the writ petition.

4. The Court heard the learned Counsel for the petitioner who reiterated the averments in the petition.

5. The learned Counsel for the respondents would submit that an interception was made on 22.5.2006 in respect of the consignment in question;

that the representative of the petitioner has admitted that it belonged to the petitioner; that he produced certain documents in order to show the

ownership; but, they were not in complete form, and thus, he was further directed to produce the documents in complete form in order to satisfy

the ownership, but not done; that under the circumstances, a communication was addressed; that a reply was given on 8.6.2006; but, it did not

contain the proper explanation or the reply or the documents; that following the same, the goods were seized after following the procedural formalities on 2.8.2006; that after the seizure, a show cause notice was issued on 15.1.2007; that a plain reading of Section 110(2) of the Customs

Act 1962, would reveal that the show cause notice can be issued within a period of six months from the date of seizure; that since the seizure was

made on 2.8.2006, the show cause notice could be issued on or before 1.2.2007; that in the present case, it was issued on 15.1.2007, and thus, it

was well within time; that proceedings have been initiated; that in such circumstances, it is for the petitioner to put forth its explanation, and hence,

the show cause notice cannot be said to be out of time either, or it is hit by the provisions u/s 110(2) of the Customs Act, or there is necessity for

the release of the goods.

6. The learned Counsel for the petitioner relied on a decision of the Calcutta High Court reported in E.S.I. Ltd. Vs. Union of India (UOI), and

would submit that in the instant case, there is no specific provision speaking about the detention of the goods; that the dominion over the goods

was lost; that it was within the department; that the detention and seizure are one and the same thing; that the department cannot say that it was a

seizure fairly made on 2.8.2006, and the limitation would commence only from that day; but not to be so; and that the period of limitation would

commence only from 22.5.2006 on which date the goods were seized by the department.

7. In answer to the above, it is contended by the respondents'' Counsel that the detention of the goods by the department is not the seizure as

contemplated u/s 110(2) of the Act; that in a given case, when the goods were detained, it was only a restraint made, and calling for the production

of the documents; that if produced properly and the department is satisfied, the goods would be immediately released; but, if not so, seizure u/s

110(2) of the Act would follow; that in the instant case, originally it was detained on 22.5.2006; that sufficient opportunity was given; that the

documentary evidence was not produced; that under the circumstances, there arose an action for seizure as envisaged u/s 110(2) of the Act,

following which the show cause notice has been issued, and under the circumstances, the writ petition has got to be dismissed.

8. The Court paid its anxious consideration on the submissions made by the learned Counsel on either side.

9. The petitioner seeks to quash the show cause notice and also for the return of the goods. It is not in controversy that on 22.5.2006, the first

respondent Department on interception, found the consignment. According to the petitioner, after a few days, its representative appeared before

the Department along with certain documents claiming that they are the owners of the goods. The Department was not satisfied. Then, the

petitioner was further called upon to produce documents in proof of the ownership. According to the Department, it was not done, and following

the procedural formalities, the goods were seized on 2.8.2006, and a show cause notice was served upon the petitioner on 15.1.2007. It could be

seen that the petitioner rested the whole case on the question of limitation that the impugned show cause notice has been issued after a period of six

months from the date of the seizure as one envisaged u/s 110(2) of the Customs Act, 1962, since the goods were taken on 22.5.2006; but, the

show cause notice was issued on 15.1.2007 which is after a lapse of six months. The learned Counsel for the petitioner relied on a decision of the

Calcutta High Court referred to above and would submit that the legislative intent in applying the provision could have been only that once a

dominion over the property is lost by the party, and it came to the hands of the department, it has got to be taken as seizure as found u/s 110(2) of

the Customs Act, and the Department cannot come forward to say that the custody of the goods was taken on one day, and they were kept under

detention, and subsequently, on the other day to its convenience, seizure was effected; and that both cannot be different. Relying on the said

decision, the learned Counsel would further submit that it is only a formal seizure which is done; that the date of detention is the date of seizure, and

thus, the show cause notice is out of time, since the said provision is mandatory, and hence, it has got to be struck down and the goods be

returned. The learned Counsel for the respondents would contend that in order to apply or have shelter u/s 110(2) of the Customs Act, the first

premise is that the goods should have been taken from the petitioner for custody; that in the instant case, it was taken neither from the petitioner

nor from the representative; but, it was one of unclaimed goods; that subsequently, a claim was made through the representative of the petitioner;

that it was on 26.5.2006; but, the seizure was made on 2.8.2006, and the show cause notice was issued on 15.1.2001; and that it was well within six months'' time.

10. After going through the relevant provision u/s 110(2) of the Act, this Court is unable to agree with the contentions put forth by the petitioner''s

side. In the case on hand, the show cause notice cannot be found to be out of time i.e., after six months from the date of seizure. When the goods

were found, on interception, they were all taken for custody by the Department on 22.5.2006. It can, at no stretch of imagination, be considered

to be one as seizure as understood u/s 110(2) of the Act. Further, assuming for a moment that the representative had produced all the

documentary proof in order to establish the ownership of the property, naturally one would expect the Department to return the same. But, such a

situation did not arise in this case. An opportunity was given for production of the documentary proof; but, it was not done.

11. One other circumstance is that a necessity arose for the department to issue a show cause notice initiating proceedings, which is after making a

seizure as one contemplated u/s 110(2) of the Act. The ""seizure"" what is provided u/s 110(2) of the Act, cannot connote the simple and mere

detention of the goods. The detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the

parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of

seizure would arise. Once the property is detained by the department, unless and until the adjudication proceedings are over, and an order is

passed for the return of the property, the Officials cannot return the goods. Thus, the detaining of goods is for the purpose of enquiry, and if not

sufficient proof coming forward, question of seizure of the property would arise.

12. The contention put forth by the petitioner''s Counsel that the detention and seizure are one and the same cannot be accepted. At this juncture, it

would be more apt and appropriate to reproduce the relevant portion of the decision of the Supreme Court reported in 1983 E.L.T. 1365 (Gian

Chand and Ors. v. State of Punjab). In that case, the Supreme Court has taken the view that seizure means to take possession of the property

contrary to the wishes of the owner of the goods in pursuance of a demand under legal right, and seizure involves a deprivation of possession and

not merely of custody of goods. Hence, in a case of detention, the custody of the goods is taken; but, it will not involve the deprivation of goods. In

such circumstances, the word ""seizure"" employed in Section 110(2) of the Customs Act cannot be said to be one of detention as put forth by the

learned Counsel for the petitioner. In this case, the seizure was made only on 2.8.2006, and the show cause notice was issued on 15.1.2007. As

such, it was within the period of six months'' time, and hence, it is not hit by that provision.

13. For the reasons stated above, this Court is of the considered opinion that the show cause notice is in order. That apart, it is not a fit case where

the goods should be ordered to be returned since the adjudication proceedings are pending before the department. Hence, the writ petition has to

necessarily fail. Accordingly, it fails and is dismissed. No costs. Consequently, connected MP is also dismissed.

