

(1999) 06 CAL CK 0005
In the Calcutta High Court
Case No : C.O. No. 12257 (W) of 1996

Rajesh Kumar Jain

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Customs Act, 1962 — Section 110, 110(2), 124, 124(1), 153

Citation : (1999) 113 ELT 57

Hon'ble Judges : S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : U.S. Chatterjee and S. Singh, for the Appellant; M. Lahiri and D. Chatterjee, for the Respondent

Judgement

1. V.K. Gupta, J. has referred the following points for consideration by a Larger Bench which are as follows :

(1) What is the true meaning and purport of the expressing "given" as used in Section 110(2) of the Customs Act?

(2) Does the expression "given" mean "sending" or "being received"?

(3) What is the meaning of the expression "given" as used in Section 124 of the Customs Act and does this expression also mean merely "sending" or does it also mean "being received"?

(4) By using the expression "shall be served" in Section 153 of the Customs Act, has or has not the legislature intended that every notice issued under the Customs Act should be actually served, that is "given", that is "be received" by the person for whom it is ment or to whom it has been issued?

(5) Does the expression "sending by registered post" as used in Clause (a) of Section 153 of the Act only indicate the manner of issuance of the notice or does it also prescribe, by implicitly obliterating the expression "shall be served" that there is no need to ensure that the notice has actually been received by the

person concerned?

(6) Does the combined reading of Sections 110(2), Section 124(a) and Section 153 of the Customs Act mean that the responsibility of a person issuing notice rest by merely sending it by registered post and that the person whose goods have been seized u/s 110 does not have any right of actually receiving the notice before the expiry of 6 months so as to invoke the benefit of release of goods conferred upon him under Clause (2) of Section 110 of the Act?

2. In view of the said reference, the matter has been placed before this Bench.

3. The reasons for the said references are that a Id. Single Judge ("Tarun Chatterjee, J.") in Opatape Fibres Pvt. Ltd. v. Collector of Customs, Calcutta reported in 1995 (1) CHN 38 relying upon the decisions in the case of K. Narasimhiah Vs. H.C. Singri Gowda, held as follows:

"For the reasons aforesaid, it must be held that "the notice is given contemplated by Section 110(2) of the Act is not the same thing as sending the notice" and "the notice is given" as occurring in Section 110(2) of the Act would mean that either the show cause notice was received by the importer or at least it had reached him. Admittedly, in this case, the show cause notice was received by the writ petitioner after the period of six months from the date of seizure as prescribed in Section 110(2) of the Act. It is not the case of Customs Authorities that the notice was even tendered to the writ petitioners on any date before the expiry of the period of limitation, as prescribed in Section 110(2) of the Act. It is also not the case of customs authorities that any other mode of service as contemplated in Section 153 of the Act was effected on the writ petitioners on any date prior to the expiry of the period of limitation."

4. It must be stated here that there was already an unreported decision of Ruma Pal, J., dated 11th May, 1993 in C.O. No. 5838(W)/9"3 wherein the learned Judge upon taking into consideration various decisions cited therein held that issuance of notice would tantamount to giving of the notice for the purpose of Section 110(2) read with Section 153 of the Customs Act. The said decision had not been brought to the notice of the Hon"ble Justice Tarun Chatterjee.

5. The subsequent Division Bench judgment of this Court in F.M.A.T. No. 923 of 1994, Union of India and Ors. v. Shri Kanti Tarafder and Ors. disposed of on 7th September, 1995 reported in 1996 (1) CHN 1, held as follows :-

"We, therefore, conclude the Section 153 of the Act controls Section 10(2) of the Act and a Notice which is required to be given u/s 153 should be given in the manner provided in Section 153 and by no other means.

The word "serve" in legal connotation means to make legal delivery (a process or writ) on or upon (a person) or to present (a person) with a writ. (See the Shorter Oxford English Dictionary re-print of 1988 at page 1949). Therefore, in legal parlance service is giving. u/s 153 of the Act, service is either by personal delivery (tender) or by putting in into transmission by registered post in case

both are possible. Thus, the legal conclusion would be that service of a notice will be complete either by tendering or by sending the same by registered post, since the legislature has equated both the situations by using the word "or".

In the event of the notice is tendered, the date on which the same was tendered should be taken as the date of giving of notice, but if the other option is exercised and the notice is sent by registered post the date of sending the notice should be the date of giving of notice as contemplated by Section 153 of the Act. Any other construction will render the legislative intent of equating tender with sending by registered post office."

6. In *India Sales International Vs. Collector of Customs and Others*, one of us (S.B. Sinha, J.) followed the said division bench decision reported in 1996 (1) CHN 1 and held :-

"In terms of the aforementioned provisions it is the duty of the Customs authorities to show that notice under Clause (a) of Sub-section (1) of Section 124 was issued to the owners and failure to issue such notice within six months of seizure of the goods would entitle the owner the return of the goods from whose possession they were seized.

Six months times u/s 110 starts from the date of despatch of notice by post. Reference in this connection may be made to *Ambali Karthikeyan v. The Collector of Customs & Central Excise and Ors.* reported in 1971 Tax L R 699 at page 700. Section 153 in my opinion, has to be read with Section 153 of the Act, in terms whereof a mandate has been given as to how a notice under the Act should be served. In other words Section 153 of the Act provides for the manner as regards service of notice issued under the Act.

Section 153 provides not only for service of notice but also of orders or decisions. Clause (a) of Section 153 in no uncertain terms prescribes that any order or decision passed or any summons or notice issued under the Act shall be served, inter alia, by tendering the same or sending it by registered post to the person for whom it is intended or to his agent. The Parliament in its wisdom while prescribing the manner of service of notice has used a terminology of sending and not serving. In this situation there cannot be any doubt that a notice can be served either by tendering the same to the owner or sending it by registered post or to his agent."

7. The said decision has been affirmed by a Division Bench (Coram V.K. Gupta and D.K. Kundu, JJ.) in *M/s. Tirupati Trading Corporation Vs. Collector of Customs and Others*, . The same view has also been taken in *Bowreah Cotton Mills Co. Ltd. v. Commissioner of Customs, Calcutta* reported in (1) 1996 C.L.T. 397.

8. In terms of the said decision the judgment of the learned Single Judge in *Oyatape Fibres Pvt. Ltd. v. Collector of Customs, Calcutta* reported in 1995 (1) CHN 38, must be held to have been overruled.

9. In that view of the matter we are of the view that the points of law for decisions by a Larger Bench as formulated by the learned Single Judge are concluded by the reason of the Division Bench judgments of this Court in Kanti Tarafder (supra) as also Tirupati Trading Corporation (supra).

10. The questions as framed are accordingly to be decided in terms of the orders of the Division Bench as referred to hereinbefore.

11. Let the matter now to be placed before the learned Single Judge having appropriate jurisdiction for disposal of the matter on merits.