

(1988) 01 CAL CK 0009

In the Calcutta High Court

Case No : Civil Rule No's. 7214 (W) and 7484 (W) of 1985

Ram Krishna Agarwalla

APPELLANT

Vs

The Controller of Central Excise

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 206(3)
Customs Act, 1962 — Section 110, 110(2), 124

Citation : (1988) 2 CALLT 3 : (1989) 19 ECC 202 : (1988) 34 ELT 25

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : Dilip Dhar and Sudhanshu Sil, for the Appellant; N.C. Roy Chaudhury, Milan Maitra and Pranab Kumar Dutta, for the Respondent

Judgement

Sudhir Ranjan Roy, J.—These two matters are taken up for analogous hearing and disposal since they involve common questions of fact and law.

2. As a matter of fact, in both the Civil Rules the common question involved is the effect of non-service of notice u/s 110(2) of the Customs Act, 1962. The petitioners in both the Rules are whole-salers in cigarettes. They buy and sell wholesale various brands of cigarettes manufactured by Duncan Agro Industries Ltd. in its Division of National Tobacco Company (in short, the N.T.C.). The petitioners not being manufacturers cigarettes are not liable for payment of any excise duty. However, the Central Excise authorities sometime in February, 1984 carried out search in the business premises of the petitioners and seized several packets of cigarettes as well as a number of documents under the different seizure lists. Subsequently, however, the seized goods excepting the documents were released in favour of the petitioners on their executing bonds under Rule 206(3) of the Central Excise Rules, 1944.

3. By reason of a Notification u/s 12 of the Central Excise and Salt Act, 1944 (in short, the Central Excise Act) some provisions of the Customs Act, 1962 including Sections 110 and 124 thereof were made applicable to proceedings

under the said Act. Section 124 read with Section 110(2) of the Customs Act provide for show-cause notices within six months from the seizure of the goods. However, within the said period no notice u/s 124 of the Customs Act was served upon the petitioners, but in exercise of the power under the proviso to Section 110(2) of the Customs Act the said period of six months was extended for a further period of six months.

4. Thereafter, on the expiry of one year from the date of the seizures the instant writ petitions were filed. Till then no notice u/s 110(2) read with Section 124 of the Customs Act having been served upon the petitioners, the petitioners have prayed for the restoration of the goods seized including the documents and/or the refund of the cash security furnished and for certain other consequential reliefs.

5. The respondents opposed both the Rules by filing separate affidavit-in-opposition and the petitioners also filed affidavit in reply controverting the averments made in the said affidavit-in-opposition

6. Appearing on behalf of the petitioners in both the Rules, it was contended by Mr. Dhar, the learned Counsel that since admittedly no notice u/s 110(2) of the Customs Act was served upon the petitioners within the period of one year from the date of the seizure of the goods, the goods became liable to be returned to the petitioners.

7. For proper appreciation of the contentions so raised by Mr. Dhar, Section 110(2) with the proviso, is quoted hereunder :

"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 whom they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months."

8. In the instant Rules, as already seen, the initial period of six months was subsequently extended for a further period of six months by the Collector of Customs after due notice to the petitioners and after giving them proper hearing.

9. As a matter of fact, Mr. Dhar did not challenge before me the propriety or otherwise of such extension of the period under the proviso to Section 110(2) of the Customs Act.

10. The only contention of Mr. Dhar was that no notice u/s 124(a) of the Customs Act having been served upon the petitioners even within the extended period of six months, the goods seized were liable to be returned.

11. Incidentally, the goods seized, namely, the packets of cigarettes, have already been returned to the petitioners in accordance with Rule 206(3) of the

Central Excise Rules, 1944. Rule 206(3) is as hereunder :

"Anything seized by a Central Excise Officer may, pending the order of the adjudicating Central Excise Officer, be released to the owner on taking a bond from him in the proper Form, with such security as the Collector may require".

12. Mr. Dhar's contention in this connection was that the petitioners were in fact entitled to the release of the goods u/s 110(2) of the Customs Act for non-compliance with the provisions thereto. The release of the goods on execution of bonds under Rule 206(3) of the Central Excise Rule pending the order of the adjudicating Central Excise Officer, according to him, did not amount to release of the goods u/s 110(2) of the Customs Act.

13. However, the fact remains that the goods having been released in favour of the petitioners in accordance with Rule 206(3) of the Central Excise Rules, the said goods have already been disposed of by the petitioners and are no longer available to the Central Excise Authorities for confiscation. And that being so, it becomes mere academic as to whether the goods were actually released u/s 110(2) of the Customs Act or not.

14. In this connection it was contended by Mr. Dhar that since the petitioners were entitled to the return of the goods seized for non-compliance with the provisions of Section 110(2) of the Customs Act, the security amounts furnished by them for the release of the goods should be directed to be refunded to them. This was, however, seriously opposed by Mr. Roychoudhury, the learned Counsel representing the Central Excise authorities.

15. According to Mr. Roychoudhury, non-service of notice u/s 110(2) of the Customs Act affects only the seizure of the goods but it did not debar the Central Excise Authorities from taking any penal actions against the petitioners u/s 9 and other relevant provisions of the Central Excise Act.

16. In my judgment, the contentions so raised by Mr. Roy- choudhury should be accepted since the law on the point now appears to be more than well-settled.

17. In this connection it may be useful to refer to the provisions of Section 124 of the Customs Act, which provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such per- son is given notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.

18. It will thus appear that while Section 110 relates to seizure of goods, documents and things ; Section 324 relates to the issue of show-cause notice before confiscation of goods, etc. It is clear from Section 110(2) that if no notice in compliance thereof is served within the period prescribed therein, the goods seized should be returned to the person from whom they were seized. Sections 110 and 124 of the Customs Act are independent of each other and there is nothing to indicate that when goods are returned u/s 110(2) no other actions can be taken against the concerned person u/s 124 of the Customs Act or any other

relevant provisions of the Customs Act or Central Excise Act.

19. The identical question came for consideration before the Bombay High Court in *Mohanlal Devdanbhai Choksey and Others Vs. M.P. Mondkar and Others*, and it was held relying on different other decisions that on a plain reading of Section 124 it will be open to the competent officer to pass an order of confiscation of goods or imposing any penalty without seizing any goods or after re- turning the goods under the proviso to Section 110(2) for failure to initiate proceedings within the prescribed time.

19a. The Supreme Court in *Assistant Collector of Customs Vs. Charan Das Malhotra*, also held that the period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notices. As a matter of fact, it has been specifically held by different High Courts that there is no justification for the acceptance of the contention that a valid notice u/s 110 is sine qua non for taking action u/s 124. These two Sections are entirely independent of each other and there is no substance in the contention that if notice u/s 110 is not in accordance with law, the authority u/s 124 will have no jurisdiction to proceed with the confiscation proceedings or with the imposition of penalty.

20. Thus, in spite of the goods seized having been released in favour of the petitioners, it is still, open to the Central Excise Authorities to proceed against the petitioners for imposition of penalty or for any other suitable actions as may be provided by law.

21. In this connection it may be recalled that *Duncan Agro Industries Ltd.*, the manufacturers of the seized cigarettes challenged the order of the Central Excise Authorities extending the period of limitation under the proviso to Section 110(2) of the Customs Act, before this Court under Article 226 of the Constitution and this Court by its order dated 25-9-84 directed maintenance of status quo as on the said date.

22. So far the instant Rules are concerned, this Court while issuing the Rules directed the respondents to keep the documents seized in a sealed box.

23. Consequent upon the aforesaid interim orders passed by this Court the Central Excise Authorities could not proceed further to dispose of the matters.

24. Incidentally, the Rule obtained by the *Duncan Agro Industries Ltd.* has since been discharged for non-prosecution and the interim order for maintenance of status quo has been vacated. It will, therefore, be open to the Central Excise Authorities how to take appropriate actions so far the instant writ petitioners are concerned.

25. It is apparently clear that the writ petitioners here are not the manufacturers of the cigarettes seized from their custody and consequently are not liable for payment of excise duty. But they can still be proceeded against u/s 9 of the Central Excise Act or any other relevant provisions for imposition of penalty, etc., in accordance with law.

26. In the aforesaid view of the matter it will not be proper at this stage to direct refund of the security amounts to the petitioners and so far the seized documents are concerned the Central Excise Authorities have a right to regain the same till disposal of the adjudication proceedings, if any.

27. Since Mr. Dhar, in the instant Rules, prayed only for the refund of the security amounts as well as documents and since the said prayers of Mr. Dhar cannot be allowed at this stage in view of the observations made earlier, the Rule is discharged and the civil order be dismissed on contest and the interim orders are vacated.

28. However, since the matters are now pending for quite some time, the Central Excise Authorities are hereby directed to dispose of the matters as expeditiously as possible and preferably within a period of six months from this date.

29. No order is made for costs.

30. This order will govern both the matters hereby heard analogously.