(2003) 11 MAD CK 0130

In the Madras High Court

Case No : Writ Petition No. 31718 of 2003

Sha Moolchand Praopchandji Gandhi APPELLANT

Vs

C.C. (Airport) RESPONDENT

Date of Decision : 10-11-2003

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

Citation : (2004) 163 ELT 20

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : B. Satish Sundar, for the Appellant; J. Madhanagopala Rao, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

R. Balasubramanian, J.—Return of the seized goods is asked for on the ground that a period of six months have elapsed from the date of seizure of the contraband, when the show cause notice was served on the petitioner. The following dates are not in dispute :

The seizure was on 23-4-2003; the show cause notice is dated 16-10-2003 and the petitioner''s case is that, it was served on him on 30-10-2003. Sub-section (1) of Section 110 of the Customs Act enables the proper officer, if he has reason to believe that any goods are liable to confiscation under the Act, to seize such goods. Under Sub-section (2) of Section 110 of the Act, when any goods are seized under Sub-section (1) referred to above and no notice in respect thereof, is given under Clause (a) of Section 124 of the Customs Act within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. Section 124 of the Customs Act directs issue of a show cause notice before confiscation of goods. Contending therefore that the show cause notice u/s 124 of the Customs Act has been served on the petitioner beyond the period of six months from the date of seizure of the goods, the petitioner wants the goods to be returned to him.

2. I applied my mind to the arguments advanced. The date of seizure was on 23-4-2003. The show cause notice is issued u/s 124 of the Customs Act. The notice is dated 16-10-2003. Assuming that the show cause notice was served on the petitioner only on 30-10-2003, can it be said that the show cause notice had been issued beyond the period of six months from the date of seizure. A careful reading of Sub-section (2) of Section 110 of the Customs Act would show that a notice for confiscation as contemplated u/s 124(a) of the Act should be given within six months from the date of seizure of the goods, In other words, mere despatch of notice within a period of six months would be sufficient compliance of the requirement of law as provided for under Sub-section (2) of Section 110 of the Customs Act.

3. If the argument of the learned counsel for the petitioner that the date of service of such notice on the person concerned alone should be taken into account to calculate the period of six months is accepted, then it would end in hazardous results. In my opinion, that cannot be the correct interpretation of subsection (2) of Section 110 of the Customs Act. If the date of service of notice on the person concerned alone should be the date to be taken into account, then any person, on whom the notice is attempted to be served, would evade receipt by avoiding and keeping the notice away from being served on him for a period beyond six months and then he would put that as a ground in the forefront to claim return of the goods. For such a construction namely, the date of service of notice on the person concerned should be taken into account in deciding the period of expiry of six months, I do not find any support from the Statutory provision itself and referred to above. Learned counsel for the petitioner would rely upon Section 153 of the Customs Act to contend that the notice must have been served in the first instance personally on the petitioner and failing such service only, it ought to have been served by registered post. In this case, notice had been served under registered post. A reading of Section 153(a) of the Customs Act does not show the order of priority in which any order or decision or any summons or notice issued under the Act, must be served. In my considered opinion, the mode of service as provided for in Sub-clause (a) of Section 153 of the Customs Act is in the alternative. In other words, the serving authority can adopt any one of the modes prescribed therein. Therefore finding that the notice in this case is shown to have been sent on 16-10-2003, I hold that there is strict compliance of the requirement of Sub-section (a) of Section 110 of the Customs Act. Consequently the writ petition stands dismissed. No costs. W.P.M.P. No. 385 05 of 2003 is closed.

