
(1988) 01 DEL CK 0016
In the Delhi High Court

Shah Chaganlal Gianmalji

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-01-1988

Acts Referred:

Citation : (1988) 34 ELT 428

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

B.N. Kirpal

1. The challenge in this writ petition is to the imposition of penalty and the order of confiscation in respect of 41 watches out of 246 watches which were seized from the petitioner.

2. Briefly state, the facts are that on 21st March, 1966 the Customs authorities sealed the locker of the petitioner at Bombay. By letter dated 25th March, 1966 the the Assistant Collector of Customs (Respondent No. 4) informed the petitioner that he intended to search the aforesaid locker and he directed the petitioner to be present there.

3. On 4th April, 1966 the said locker was opened and searched. 246 wrist watches were found in it. Responded No. 4 believed them to be liable to confiscation and he seized the said watches by invoking the provisions of Section 110(1) of the Customs Act, 1962.

4. On 14th October, 1966 the petitioner received a show cause notice u/s 124 of the Customs Act whereby responded No. 4 asked the petitioner to show cause why the watches which had been seized should not be confiscated any why penal action should not be taken against him. This notice was issued more than six months after the seizure of the goods.

5. The petitioner sent a reply. According to the petitioner the seizure must be deemed to have been effected when the locker was sealed and, Therefore, the

show cause notice issued on 30th September, 1966, and received by the petitioner on 14th October, 1966, had not been issued within the statutory period of six months from the date of seizure of the watches within the meaning of Section 110(2) of the Customs Act. The petitioner, Therefore, submitted that the watches should be released as provided by Section 110(2) of the Act. The petitioner also contended that the watches had been lawfully acquired by him and there was no occasion to believe that they were smuggled.

6. The petitioner against wrote a letter date 9th April, 1967 to respondent No. 4 asking for the release of the watches. A reminder dated 20th April, 1967 was also sent but without any response. The Additional Collector of Customs (Respondent No. 3) then passed an order dated 24th September, 1968 holding that the petitioner had failed to discharge the burden cast on him u/s 123 of the Customs Act and that the watches under seizure and he also imposed a penalty of Rs. 10,000/-

7. The petitioner thereafter filed an appeal before the Central Board of Excise and Customs. By order dated 14th September, 1972 the appeal of the petitioner was allowed in part. The Board accepted the contention of the petitioner of lawful acquisition to extent of 205 out of 246 watches. These watches were directed to be realised. Confiscation in respect of 41 watches was upheld but the penalty was reduced from Rs. 10,000/- to Rs. 2,500/-. While holding that the show cause notice had been given within 6 months, the Board rejected the contention that the petitioner was entitled to the return of the watches u/s 110(2) of the Act.

8. The petitioner then filed a revision application before the Government of India. The same was, however, dismissed by order dated 24th/30th August, 1973.

9. In the present writ petition filed under Article 226 of the Constitution of India, the aforesaid order of confiscation of 41 watches and the imposition of penalty of Rs. 2,500/- is challenged.

10. The first contention of the learned counsel for the petitioner is that as the show cause notice had been issued by respondent No. 4 six months after the seizure of the goods, Therefore, by virtue of the provisions of Section 110(2) the goods were liable to be returned and, further, no proceedings could take place u/s 124 of the Act. The learned counsel submits that the penalty which can be imposed by the respondents is that of confiscation of the goods which were seized. If the goods which have been seized have to be returned u/s 110 because on non - issuance of the show cause notice, then it must follow that the subsequent proceedings u/s 124 cannot be initiated. According to the learned counsel, in the present case the show cause notice was admittedly served on the petitioner more than six months after the seizure of the goods. In support of this contention, strong reliance is placed by the learned counsel on a decision of this court in the case of *Sain Ditta Mal. v. Union of India and Others*, AIR 982 Del 509.

11. However, attractive the argument of the learned counsel may appear to be, I am afraid it is difficult for me to accept the same. Firstly Section 110 had nothing

to do with the ultimate confiscation of the goods Section 110 only enables an officer to seize the goods if conditions precedent thereto exist. After the goods have been seized, subsequent action into be taken u/s 124 of the Act. The action u/s 124 is not dependent upon an action having been taken u/s 110. It maybe that for some reasons some smuggled goods may not be seized but nevertheless proceedings may be initiated u/s 124. In any case, this question is no longer rest integra as far as this Court is concerned. A Division Bench of this Court in the case of Hemant Bahadur Lama v. Union of India and Others 1982 (10) ELT had an occasion to deal with this question. It was observed by this Court as follows:

"The law is thus clear. The two section i.e., Section 110 and 124 are independent. There is nothing in language of Section 110 of the Act to indicate that a fetter of limitation is imposed upon power of the competent authority to initiate proceedings u/s 124 of the said Act. A notice issued after the period of six months does not invalidate the proceedings initiated on such notice even though it was issued on an extension of time illegally made ex parte. So the failure to give notice u/s 110 of the Act cannot in any way affect the power to proceed with proceedings for confiscation. The argument, Therefore, that as notice was not issued within six months from the date of seizure the petitioner is entitled to the return of the car is without any merits."

The learned counsel for the petitioner contended that Hemant Bahadur Lama's case is clearly distinguishable. It was submitted that in Lama's case the Court found that in fact six months" notice had been issued to the person from whom the car had been seized. It is true that in that case notice had been given to the driver from whom the car been seized. The petitioner had, however, been filed not by the driver but by the owner of the car. It was in this petition that the counsel for the petitioner had specifically contended that in the absence of a show cause notice within 6 months of the seizure of the vehicle, proceedings u/s 124 could not be initiated. It is this contention which was repelled by the Division Bench of this Court in the aforesaid terms. The position in law was made clear. The attention of the Division Bench was not drawn to the decision of Ranganathan, in Sain Ditta Mal's case but I am in full agreement with the reasoning of the Division Bench. Following the aforesaid decision of the Division. It must be held that the proceedings u/s 124 against the petitioner could not be regarded as being invalid.

It was then contended by the learned counsel for the petitioner that in the present case 205 wrist watches have been returned. Learned counsel submitted that there was no valid confiscation because the officer could not have reason to believe that the wrist watches were liable for confiscation if ultimately it was to be found that at least majority of the wrist watches had been validly imported. It is not necessary for me to comment on the merits of the decision of the Central Board of Excise and Customs which had partly allowed the appeal of the petitioner and had ordered the release of 205 watches. It does appear that the evidence which was produced by the petitioner, and which was readily accepted

by the Board, did merit a more close scrutiny. Be that as it may, it cannot be said that on the date of the seizure the officer concerned could not have a reasonable belief that the watches would be liable for confiscation. The petitioner admittedly was not a dealer in watches. He had a shop in Madras. The search of his locker revealed the presence of 246 watches. It is indeed surprising that the Board did not address itself and possibly even thereafter, to have come to the conclusion that these watches, which were admittedly not Indian Watches and had come into the country from abroad, were smuggled. This is more so when at the time of seizure there was no proof available that these watches had been validly acquired by the petitioner. The evidence which was accepted by the Board was produced subsequently. In my view, Therefore, the seizure of the watches was unexceptional.

13. No other contention has been raised before me on behalf of the petitioner.

14. For the aforesaid reasons the write petition is dismissed with costs.