(2011) 04 CAL CK 0056

In the Calcutta High Court

Case No : A.P.O.T. No. 128 of 2011 and G.A. No. 952 of 2011

S.J. Fabrics Pvt. Ltd. — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:
Customs Act, 1962 — Section 108, 110, 110(2), 124

Citation : (2011) 4 CHN 185 : (2011) 268 ELT 17

Hon'ble Judges : Sambuddha Chakrabarti, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Shibdas Banerjee, for the Appellant;R. Bharadwaj, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This Mandamus-Appeal is at the instance of an unsuccessful writ-Petitioner and is directed against an order dated 17th February, 2011 passed by a learned Single Judge of this Court by which the learned Single Judge disposed of a writ-application filed by the Appellant by directing that the detained consignment of the writ-Petitioner should be immediately released if no show cause notice u/s 124(a) of the Customs Act is issued within six months from the date of detention of the consignment and if six months expire and/or have already expired within such time, not exceeding further six months as the Commissioner might allow or if the Commissioner of Customs does not extend the time, then it would be open to the writ-Petitioner to claim damages for wrongful detention in accordance with law.

2. Being dissatisfied, the writ-Petitioner has come up with the present Mandamus-Appeal.

3. In the writ-application, the grievance of the writ-Petitioner was that although the consignments sought to be exported by the writ-Petitioner were detained by the Customs Authority on 4th August, 2010, the Authority was neither issuing any show-cause notice nor had issued any order of seizer u/s 110 of the Customs Act. According to the writ-Petitioner for such inaction or deliberate illegal action

on the part of the Respondent authority, the writ-Petitioner is unable to take any action in terms of Section 110(2) of the Act. According to the writ-Petitioner in the name of roving enquiry, the Customs Authority is harassing the writ-Petitioner without taking any step in terms of Section 110 of the Act although the Authority knows that the writ-Petitioner is the owner of the consignments and summons in terms of Section 108 of the Act has already been issued to the writ-Petitioner.

4. The learned Single Judge took note of the fact that in this case a notice dated 31st January, 2011 has been issued to the writ-Petitioner purportedly u/s 110(2) of the Act for extension of time to issue show-cause notice u/s 124(a) of the Act for further period of six months but according to the learned Judge, the said notice was apparently without any authority as there was no scope for the Directorate of Revenue Intelligence to issue any notice to the writ-Petitioner u/s 110(2) of the Act. The learned Judge further found that the Authorities had proceeded on the basis that the goods had been detained in exercise of power u/s 110 and accordingly, purported to issue the aforesaid notice u/s 110(2) of the Act. His Lordship further held that actually there is no order of seizure or detention in the present case u/s 110 on the owner of the consignments and that there being no limitation u/s 110, a notice u/s 110 may be issued at any point of time. However, the learned Single Judge proceeded, such notice should ordinarily be issued immediately upon interception and detention of the goods and the goods cannot be indefinitely detained without any order u/s 110. Ultimately, the learned Judge held that there being no limitation for issue of an order of seizer u/s 110, the appropriate authority might still issue an order of seizer u/s 110 and even if there were a formal order of detention u/s 110, the goods could have been detained for a period of six months and then a further period not exceeding six months if the Commissioner of Customs extended the time for sufficient cause being shown. According to the learned Single Judge, as the allegations against the writ-Petitioner were serious, this Court was not inclined to scuttle the investigation by directing release of the consignments in question.

5. After hearing the learned Counsel for the parties and after going through the materials on record including the affidavit-in-opposition, we find that in the case before us, in the affidavit-in-opposition it is alleged that the consignments of the writ-Petitioner loaded in the trucks entered into the CWC Complex on 31st July, 2010 and even on 4th August, 2010 when the visiting DRI Officers inquired about the status of the goods loaded in those trucks, no appropriate documents were found available with the competent authority. Even subsequently, no Bill of Export was placed before the authority of Petrapole Land Customs Station Authority showing any document intending to export the same. It is further stated that the goods were detained for the purpose of investigation based on specific intelligence that those goods were attempted to be exported illegally for unlawful gain of Duty Exempted Pass Book (DEPB) credit and that the investigation proceeding had not attained its finality.

6. From the aforesaid averment, it is clear that although no specific order of seizer has been issued to the writ-Petitioner, it is apparent that there has been actual detention of the goods u/s 110 of the Act and time will run for giving show-cause notice u/s 124(a) from at least 4th August, 2010. It further appears that already summons in terms of Section 108 of the Act has been issued to the writ-Petitioner and he is being examined and thus, it necessarily follows that there has been seizure of the goods in terms of Section 110 of the Act and the writ-Petitioner has been summoned in connection with the investigation.

7. We do not approve the observation of the learned Single Judge that there is no time limit for issuing order of seizer u/s 110. If the consignment of a person is detained, it should be presumed that the goods has been seized in terms of Section 110 of the Act even if no formal order has been issued by the Customs Authority and the time for issuing notice to show-cause in terms of Section 124(a) runs from the actual date of detention. In the case before us, it appears that the Respondent authority has also treated the seizure to be operative and consequently, has started investigation by issuing summons u/s 108 of the Act and has also given show-cause notice for extension of time by further six months.

8. We, therefore, although do not interfere with the final order passed by the learned Single Judge refusing to release the goods, we do not approve her finding that there is no time period for issuing an order of seizure u/s 110 of the Act. We have already pointed out that the act of detention itself is sufficient to imply running of time u/s 124(a) of the Act and notwithstanding the fact that no formal order of seizer has been passed, the owner of the consignment can avail of the provision contained in Section 110(2) of the Act from the date of detention of the goods.

9. The appeal is, thus, disposed of with the above observations by modifying the order impugned only to the extent indicated above. We make it clear that we have otherwise not gone into the question whether extension of time u/s 110(2) of the Act in this case was justified or not and the disposal of this appeal will not stand in the way of the Appellant in seeking appropriate remedy before appropriate forum in accordance with law against such order of extension.

10. In the facts and circumstances, there will be, however, no order as to costs.

