

(1973) 10 MAD CK 0015
In the Madras High Court

The Collector of Customs and Central Excise	APPELLANT
Vs	
Amruthalakshmi alias Geetha and Others	RESPONDENT

Date of Decision : 08-10-1973

Acts Referred:

Customs Act, 1962 — Section 110, 135

Citation : (1973) ILR (Mad) 1 : (1974) 2 MLJ 88

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—These appeals arise out of four writ petitions, W.P. Nos. 944 of 1971, 1408 of 1971, 1409 of 1971 and 1411 of 1971. The relief asked for was for the issue of a writ of certiorari to quash the order of the Collector of Customs dated 18th August, 1970 and 12th August, 1970 directing the confiscation of 450 watches, and levying of penalties, and against the order of the Collector of "Customs granting sanction of prosecution against the petitioners u/s 135 of the Customs Act.

2. The main contention that was raised before the learned Judge and which found acceptance was that the notice as contemplated u/s 110 of the Customs Act was not in accordance with law and as such further proceedings taken by the Collector u/s 124 of the Customs Act were illegal and without jurisdiction. The short facts that are necessary may be stated. The watches were seized on 1st June, 1969. The Collector gave a notice on 4th November, 1969 extending the period of notice to 31st May, 1970. He actually gave a show-cause notice on 1st May, 1970, that is more than six months after the seizure of the watches but before the expiry of one year. The contention that was raised was that the requirements u/s 110 of the Act had not been complied with, and therefore no further action could be taken by the authorities u/s 124 of the Act.

3. Section no occurs in Chapter XIII of the Customs Act which relates to searches, seizure and arrest. Dealing with the power of the officers to seize goods, documents and other things, Section 110 provides that if the officer has

reason to believe that any goods are liable to confiscation, he may seize such goods. The proviso enables the Officer in cases where it is not practicable to seize the goods, to serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer. Sub-section (2) enables the officer to keep the seized goods for a period of six months. But when goods are seized under Sub-section (1) of Section 110 of the Act, if a notice as provided for under Clause (a) of Section 124 is not given within six months of the seizure of the goods, the officer is bound to return the goods to the person from whose possession they were seized. The proviso enables the officer to get an extension of the period of notice from six months to one year by applying to the Collector of Customs.

4. Section 124 occurs in Chapter XIV relating to confiscation and imposition of penalties. Now in dealing with the power of confiscation or imposing penalty, the section provides that no order of confiscating any goods or imposing any penalty on any person shall be made unless the conditions provided for under Sub-sections (a), (b) and (c) are fulfilled. Sub-section (a), of Section 124 requires that a notice in writing informing the owner of the grounds on which it is proposed to confiscate the goods or to impose a penalty should be given and Sub-section (b) requires that an opportunity of making a representation in writing should be given within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein and Sub-section (3) requires that a reasonable opportunity of being heard in the matter should be given. Now Section 110 requires that the goods seized directed to be kept in the custody of the owner have to be returned to the person from whose possession they were seized, if no notice in respect thereof is given within six months of the seizure of the goods under Clause (a) of Section 124. It follows, therefore, that if within the period of six months or one year as the case may be no notice has been given under Clause (a) of Section 124, the goods shall be returned to the person from whose possession they were taken. The power to retain the goods is no longer available after the period has expired. We find no connection between the exercise of power of confiscation of the goods and of imposing penalty, and the provision in Section 110 which requires the officer to hand over the goods to the owner after the period specified, if no notice u/s 124 (a) is given. Section no puts a limit to the power of seizure and retention of goods by the officer. When once action is taken u/s 124 before the expiry of the period as contemplated in Section 110, he may continue to retain the goods. But the failure to give notice u/s 110 does not in any way affect the power of the authorities to proceed with the proceedings for confiscating the goods or imposing any penalty. Mr. Dolia, the learned Counsel for the respondent, submitted that a valid notice, within the period specified u/s 110 is a sine qua non for taking action u/s 124 of the Customs Act. We do not see any justification for the acceptance of such a contention. These two sections are entirely, independent. Section no deals with the right of the officer to retain the seized goods for a specified period and his duty to return them to the possession of the

owner from whom they were seized unless action u/s 124 had been taken. Section 124 prescribes the procedure under which the goods can be confiscated and penalty can be imposed. All that Section 124 requires is fulfilling the conditions specified in sub-clauses (a), (b) and (c). In this case the Collector extended the period upto 31st May, 1970 and the show-cause notice was actually given on 1st May, 1970 before the expiry of the extended period. In this case we do not propose to go into the question as to whether the time for issue of a show-cause notice was properly extended or not, for, it does not arise. The proceedings were taken for confiscation of the goods and for imposing a penalty. The petitioners in those proceedings did not contend that the notice u/s 110 was not in accordance with law or that as the notice u/s 110 was not in accordance with law., proceedings u/s 124 were not open to them. In those proceedings, it is already stated, the Collector directed the confiscation of the, goods which were seized from the two ladies, and also imposed a penalty on the two owners. That order is the subject matter of appeal to the Central Board of Excise and Customs.

5. The order of confiscation and penalty having been levied by an authority empowered under the Act, it is open to the aggrieved person to take the matter up on appeal which they have done. We are unable to accept the plea that the order of the confiscation or the order of imposing penalty is erroneous or not in accordance with law or without jurisdiction. The question as to whether the extension of time provided for u/s 110 for the issuing of a show-cause notice was properly done or not, may be challenged by the aggrieved persons in the appeal before the Central Board of Excise and Customs. We may at once state that we do not find any substance in the contention that if the 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. In this view, we are unable to see any justification for quashing the order of the Collector confiscating the goods or imposing penalty.

6. We may now refer to two decisions which are very strongly relied on by the respondent in support of his contention that if there is no proper notice u/s 110 of the Act, the authorities will not be entitled to proceed with confiscation or imposition of penalty. A reference was made to Assistant Collector of Customs Vs. Charan Das Malhotra, , where the question that was considered was whether the extension of time granted in the case by the Collector was in accordance with law. The Court held that Section 110 contemplated some sort of inquiry and the Collector was expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there existed facts which indicated that the investigation could not be completed for bone fide reasons within the time laid down in Section 110 (2) and that therefore, extension of that period had become necessary. Holding that the Collector cannot extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension, the Court proceeded to observe that the order of the Collector extending the period for the issue of a show-cause notice was not valid. The decision does not lend any support to the contention that when once notice u/s

110 is not properly given, proceedings u/s 124 are not open. On the other hand the passage in paragraph 5 of the judgment would indicate contra. The passage is quoted below:

The section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110 (2) affects only the seizure of the goods and not the validity of the notice.

Section 124 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 person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose penalty. The passage quoted above, in our view, makes it very clear that notice for taking action u/s 124 can be given and no time limit is prescribed for issue of such notice.

7. Mr. Dolia submitted that so far as the case before the Supreme Court is concerned, it arises out of an appeal from the Calcutta High Court and the Bench of the Calcutta High Court allowed the writ petition and quashed the notice u/s 124 on the ground that the notice given u/s 110 was not in accordance with law and that decision was confirmed by the Supreme Court. On going through the decision of the Bench of the Calcutta High Court which is reported in *Charandas v. Assistant Collector of Customs* AIR 1968 Gal. 28 or that of the Supreme Court in *Assistant Collector of Customs Vs. Charan Das Malhotra*, , we find no support for Mr. Dolia's submission. Before the Calcutta High Court, the proceedings u/s 124 were attacked on the ground that the person to whom notice was given did not have a proper opportunity for defending himself. The Bench of the Calcutta High Court pointed out that so far as Section 110 is concerned, it dealt, not with the issue of notice, but with the seizure of the goods and the return thereof, and in other words, if the provisions were not satisfied, the goods seized had to be returned and that, therefore, since the extension had not been properly granted, the appellant was entitled to the return of the goods. Having said so, the learned judges of the Calcutta High Court proceeded to point out thus:

That by itself may not invalidate the notice itself. For that purpose we have to travel to the next point taken, namely, the nature of the notice which has been issued u/s 124 of the said Act. The point taken is that the notice that has been issued is so vague and uncertain that the appellant had no reasonable opportunity of defending himself..

The contention that the aggrieved person had no reasonable opportunity of defending himself was accepted by the Calcutta High Court. The Supreme Court refrained from dealing with the point relating to Section 124 and stated thus:

We are also not dealing with the question as to whether the notice u/s 124 (a) was vague and, therefore, void as decided by the Division Bench. That part of the decision of the High Court was not challenged before us, and therefore, we are not called upon to give our decision on that part of the case.

Mr. Dolia contends, that any defect in the notice u/s 110 would bar proceedings u/s 124 of the Customs Act. On the other hand, the passages cited would indicate that a notice u/s 110 is only with reference to the power of seizure and detention of goods and the notice contemplated u/s 124 does not require that it should be within a particular time. The learned Counsel relied on certain decisions of Other High Courts, namely, P. JV. Agarwal v. Union of India (1972) A.L.J. 963 and Kunjan v. Assistant Collector of Customs 1972 K.L.T. 407. The first decision related to the power under the proviso to Section 110 (2) of the Act. The Allahabad High Court held that the power under the proviso to Section 110 cannot be exercised without affording an opportunity of being heard being given to the person from whose possession the goods are seized. In dealing with the powers u/s 110 (2) the Court observed:

It is, therefore, clear that the Collector, Central Excise and Customs was not competent to extend the period of six months mentioned in Section 110 (2) of the Customs Act, without giving an opportunity of being heard, to the petitioner, the respondents are therefore, bound to return the goods seized under Sub-section (i) of Section 110 to the person from whose possession they were seized. They are not entitled to retain the 14 items of gold and other articles of foreign origin for purposes of proceeding u/s 124 of the Customs Act.

Mr. Dolia would strongly rely on the last sentence, namely, that the authorities will not be entitled to hold articles for purposes of Section 124 of the Customs Act and would submit that when once the notice u/s 110 fails, the goods will have to be returned and no other provision of the Act can be availed of. We are unable to read the passage in the manner he would like us to read. All that the passages states is that when once time for detention expires, the officer has to return the goods and he will not be permitted to withhold it on the ground that he is contemplating taking action u/s 124 of the Act. It does not say that when once there is no proper notice u/s 110, action cannot be taken u/s 124. The next decision that was relied on by the learned Counsel for the respondent is Kunjan v. Assistant Collector 1972 K.L.T. 407. That decision also" related to requirements u/s 110 (2) of the Act.

In paragraph 6 it was observed:

From the date of seizure the initial period granted u/s 110 (2) for the concerned officer to make up his mind as to whether show-cause notice u/s 124 should be issued for confiscation of the goods is six months. Thereafter power is given to the Collector to extend the period of six months but that he can do only on showing sufficient cause.

The observation that the concerned officer has to make up his mind as to whether show-cause notice u/s 124 should be issued for confiscation of the goods is six months is relied on and it was sought to be contended that after that possession was not taken by the officer and no proceedings u/s 124 can be taken. We are unable to read the passage as meaning that if a notice is not given

u/s 110 (2) within six months, no action can be taken u/s 124 of the Act. We have no doubt that on a reading of the provisions of the section itself, the contention of the learned Counsel for the respondent that when there is no proper notice u/s 110, proceedings u/s 124 are void cannot be upheld. In the result, we find ourselves unable to agree with the conclusion reached by the learned single Judge that notice u/s 110 (2) and notice u/s 124 of the Act should be given within six months from the date of seizure of the goods; nor are we able to accept the view of the learned Judge that a vested right is created in favour of the owner of the goods when a show-cause notice u/s 124 is not given within six months as provided for u/s 110 (2).

8. For the reasons stated above, the appeals, have to be allowed and the judgment of the learned Judge set aside.

9. So far as the criminal prosecution is concerned we do not see any justification at all for the High Court to interfere. Section 137 of the Act provides that no Court shall take cognizance of any offence under Sections 132 to 134 or Section 135 except with the previous sanction of the Collector of Customs. The Collector gave the sanction for prosecution of an offence u/s 135. The contention is that as the notice u/s 124 as contemplated u/s 110 is not proper, the owner of the goods is immune from any further proceedings either by way of confiscating or levying penalty or criminal prosecution. On that basis it is next contended that no prosecution could ever lie and the sanction given by the Collector should be quashed. We are of the view that Section 110 can only be restricted to the seizure and detention of the goods for the period specified and has nothing to do with the other powers conferred on the authority u/s 124 or other provisions of the Act. The submission that no prosecution would lie cannot be accepted.

10. In the result, all the writ appeals are allowed and the writ petitions will stand dismissed. There will be no order as to costs.