
(2011) 01 MP CK 0063
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 782 of 2006

The Commissioner of Central Excise and Others	APPELLANT
Vs	
Ram Kumar Aggrawal	RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Customs Act, 1962 — Section 110, 110(1), 110(2), 124, 153

Citation : (2012) 280 ELT 13 : (2011) ILR (MP) 877

Hon'ble Judges : S.S. Kemkar, J; Abhay M. Naik, J

Bench : Division Bench

Advocate : Abhisheikh Tugnawat, for the Appellant; G.M. Chaphekar, learned and Subodh Abhyankar, learned Counsel Advocate, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—The is writ appeal is directed against the order dated 15th November, 2000 passed by the learned Single Judge of this Court in Miscellaneous Petition No. 44/1990, quashing thereby show cause notice dated 29.09.1989 (Annexure 10) issued by the Collector, Customs & Central Excise, Indore.

2. Short facts, leading to the present writ appeal, are that the Petitioner-Respondent was engaged in the business of Silver Refinery, being proprietor of Shri Ganesh Bullion Refinery. On 03.04.1989, a search was conducted at the shop of the Petitioner-Respondent and a seizure was made of 129.720 kilograms of silver and currency notes etc. A panchnama was prepared in the absence of the Petitioner, copy whereof was annexed to the writ petition as Annexure-1. He was served with a show cause notice on 07.10.1989 in registered AD manner, copy whereof is placed on record as Annexure-10. Miscellaneous Petition No. 44/1990 was submitted with allegations that the said show cause notice was given to the Petitioner beyond the statutory period of six months, as prescribed in Section 110 of the Customs Act, 1962. Accordingly, a prayer was made for issuance of writ of certiorari for quashing of the said show cause notice.

Additionally, a direction was sought against the Respondents for return of the seized articles / goods.

3. In the return, it was stated that the seizure was duly made and the show cause notice was duly given to the Petitioner. It was served on 28.09.1989, by way of affixture at the residential premises of the Petitioner and a panchnama was duly prepared to this effect, as revealed in Annexure R/1. Additionally, show cause notice was also issued by the Office of the Collector, Customs & Central Excise, Indore on 29.09.1989 by registered post. A show cause notice was also affixed on the Notice Board of Respondent's Office on 29.09.1989 vide Annexure R/2. Accordingly, the seizure having been duly made and the show cause notice having been duly given, the writ petition is liable to be dismissed.

4. Learned Single Judge vide impugned order dated 15th November, 2000 held that the Respondents-Appellants have failed to establish that the show cause notice was sent in conformity with the statutory requirement contained in Section 153(a) read with Section 110(2) of the Customs Act, 1962. Accordingly, the impugned show cause notice was found to have been vitiated and the writ petition was resultantly allowed.

5. Aggrieved by the aforesaid order, the present writ appeal has been preferred. Shri Abhisheikh Tugnawat, learned Counsel for the Appellants and Shri G.M. Chaphekar, learned senior counsel for the Respondent made their respective submissions, which have been considered in the light of the material on record as well as provisions of law governing the situation.

6. It is contended on behalf of the Appellants that the notice under Clause (a) of Section 124 of the Customs Act, 1962 was duly given within six months of the seizure of the goods. The same was equally good within the ambit of Section 110(2) of the Customs Act. According to the learned Counsel, learned Single Judge has committed an error in holding contrary by mis-construing the provisions.

7. Aforesaid contention has been countered by Shri Chaphekar, learned senior counsel appearing for the Respondent, relying on the Supreme Court decision in the case of K. Narasimhiah Vs. H.C. Singri Gowda, . Strong reliance has been placed on para 11 of it, which reads as follows:

11. Giving of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th

October. In our opinion, the notice given to five of the Councillors was of less than three clear days.

According to him, notice under Clause (a) of Section 124 of the Customs Act, 1962 referred to in Sub-section (2) of Section 110 thereof, can be said to be given only on service on the addressee.

8. In order to appreciate the rival contentions, we feel it necessary to reproduce the relevant portions of the following provision of law:

Section 110. Seizure of goods, documents and things.-(2)Where any goods are seized under Sub-section (1) and no notice in respect of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

Section 124. Issue of show cause notice before confiscation of goods, etc..-No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty

9. Perusal of the aforesaid provisions makes it clear that Sub-section (2) of Section 110 conferred a right on the Respondent to seek the return of the goods in question, if no notice to him, in respect thereof, is given under Clause (a) of Section 124 within six months of the seizure of the goods. Section 124 empowers the department to confiscate any goods or impose any penalty on any person if he is given notice in writing informing him of the grounds on which it is proposed to confiscate the good or to impose a penalty. Section 110 deals with the seizure of goods, documents and things, whereas Section 124 requires issuance of a show cause notice before confiscation of goods etc. It is important to note that the central legislature has made it obligatory on the part of the department to give a notice by employing the words "notice in respect thereof is given" in Section 110(2) which is required to be given in writing by virtue of Clause (a) of Section 124. The words "notice is given" cannot be construed as "notice is served" else the legislature itself could have used the word "served" in place of "given". The word "given" cannot be treated as a synonym to word "served", unless it is so indicated by the legislature in express manner or by necessary implication.

10. Sub-section (1) of Section 110 of the Customs Act empowers the proper officer to seize the goods, if he has reason to believe that the goods are liable to be confiscated under the said Act. After such seizure, he is further obliged to give a notice within six months of the seizure of the goods, failing which, the goods shall be liable to be returned to the person from whose possession they were seized. The object of this provision is to apprise such person of the grounds on

which confiscation of the goods or imposition of penalty is proposed. In view of the object and purpose of this provision, the legislature in its wisdom has used the words "notice is given", which would obviously mean that notice must be issued within six months of the date of seizure. The purpose of this provision is to relieve such person, if the department sleeps over the matter for a period exceeding six months from the date of seizure, without issuing notice of intended confiscation of the goods or imposition of penalty. Its purpose will not be frustrated, if the notice, though is given within six months of the seizure of the goods, is not served on such person within six months. On the contrary, if the same is construed so as to mean service within six months from the date of seizure, such person may avoid the service of notice for a period up to six months and may further take undue advantage by invoking Sub-section (2) of Section 110. Needless to say that notice may be given by invoking the mode of registered post, which seems to have been prescribed by virtue of Section 153 of the said Act.

11. In the case of Narsimhiah (*supra*), it has been further observed:

15. A consideration of the object of these provisions and the manner in which the object is sought to be achieved indicates that while the legislature did intend that ordinarily notice as mentioned should be given it could not have intended that the fact that the notice is of less than the period mentioned in the section and thus the Councillors had less time than is ordinarily considered reasonable to arrange his other business to be free to attend the meeting, should have the serious result of making the proceedings of the meeting invalid.

20. We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days" notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the Appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice.

12. Reliance on the decision in the case of K. Narasimhiah (*supra*) does not render assistance to the Respondent, in view of the object sought to be achieved by Section 110(2) of the Customs Act.

13. Thus, we are now required to consider the word "given" in the context of notice for the purpose of achieving the object of Sub-section (2) of Section 110 of the Customs Act, 1962. The object of the said provision read with Clause (a) of Section 124 of the Act, is to apprise of the proposed ground of confiscation or imposition of penalty. If the notice is issued by registered post within six months of the seizure of the goods and it reaches the person concerned after six months, the proceedings undertaken by the department are not prejudicially affected. On

the contrary, if the notice is dispatched well before the expiry of six months and its service is avoided by the person concerned until such expiry in collusion with postman or otherwise, undue advantage / shelter of Sub-section (2) of Section 110 may be obtained. This perhaps may be the reason that the legislature did not use the words "no notice in respect thereof is served" in place of "no notice in respect thereof is given". It may further be seen that the Petitioner himself in paragraph 13 of the writ petition has clearly mentioned that he is in receipt of the said notice. Thus, the object of the notice for the purpose of Section 110(2) of the Act stands achieved.

14. We may successfully refer to the Division Bench decision of the High Court of Calcutta in the case of Union of India (UOI) Vs. Kanti Tarafdar, . While dealing with Section 110(2), 124 and 153 of Customs Act, 1962, it has been observed:

28. Therefore, the real object of the notice u/s 110(2), which is required to be issued in writing as provided in Section 124 and which is required to be given within six months, is to give the authority concerned a time-limit of six months to make out a case for confiscation of the goods seized.

29. Once the authority concerned makes out a case for confiscation within the time-limit, it cannot be sit idle. It has to make the concerned person aware of such case by giving the written notice. The question therefore is how to give such notice.

30. The only mode or manner of serving of notices issued under the Act has been provided in Section 153. The legislature in Section 153 of the Act gave a clear mandate that any notice issued under the Act should be served in the manner provided in the section.

31. The legislature, while providing that a notice u/s 110(2) must be given within the time as specified in the said section did not provide in the section itself as to how such notice should be given, but at the same time provided that a notice u/s 110(2) should be a notice "issued" u/s 124 of the Act and "any notice", issued under the Act," which obviously includes a notice u/s 124 of the Act, should be "served" in the manner provided in Section 153 of the Act. If the legislature intended that the manner and method of giving notice u/s 110(2) should be different, then it would not have provided in the said section the words "notice in respect thereof if given under Clause (a) of Section 124" and the words "Issue of show cause notice" in Section 124 of the Act and the words "Any ... notice issued" in Section 153 of the Act.

32. It is also our duty to harmonise the provisions of the Act to find out the real legislative intent. If we fail in doing so and do not harmonise these three sections then we have to read in Section 153 "any notice", "except notice contemplated u/s 110(2), issued under the Act" shall be served in the manner provided for in Section 153, which unfortunately, we cannot do as that will mean supplying of words in Section 153 even though there is no ambiguity in the section itself.

33. If that be so the notice as contemplated in Section 110(2) of the Act must be a notice to be issued u/s 124 of the Act and must be given in the manner as provided for in Section 153 of the Act and not in a manner or method not thought of by the legislature at the time of enacting the Act concerned.

34. Further, Section 110(2), though a mandatory provision, contemplates giving of a notice u/s 124, which is a general provision, while Section 153 provides the mode of giving of such notice, which is a special provision. Applying the maxim "Generalia specialibus non-derogant", which means special provision will prevail upon general provision, we are of the view that special procedure for service of notice as provided for in the Act should prevail over the general enactment of giving of notice.

35. We, therefore, conclude that Section 153 of the Act controls Section 110(2) of the Act and a notice which is required to be given u/s 110(2) should be given in a manner provided in Section 153 and by no other means.

36. The word "serve" in legal connotation means to make legal delivery (a process or writ) on or upon (a person) or to present (a person) with a writ. (See the Shorter Oxford English Dictionary, re-print of 1988 at Page 1949). Therefore, is legal parlance serving is giving.

37. u/s 153 of the Act, service is either by personal delivery (tender) or by putting it into transmission by registered post in case both are possible.

38. Thus, the logical conclusion would be that service of a notice will be complete either by tendering or by sending the same by registered post, since the legislature has equated both the situations by using the word "or".

39. In the event of the notice is tendered, the date on which the same was tendered should be taken as the date of giving of notice, but if the other option is exercised and the notice is sent by registered post the date of sending the notice should be the date of giving of notice as contemplated by Section 110(2) of the Act. Any other construction will render the legislative intent of equating tender with sending by registered post otiose

15. We may also successfully refer to the Division Bench decision of the Court of Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana v. Mohan Bottling Co. (P) Ltd. reported as 2010 (255) ELT 321 (P & H), which is to the effect that sending of notice through registered post at the correct address of the Assessee is sufficient compliance. In the case in hand, we are not concerned with the presumption of service, because the Petitioner himself has already admitted receipt of notice in paragraph 13 of the writ petition.

16. Now, coming to the material on record, it is an admitted position that the seizure of the goods was made on 03.04.1989. Show cause notice under Clause (a) of Section 124 of the Act was served on 29.09.1989 by way of affixture at the residential premises of the Petitioner, as revealed in the panchnama marked as Annexure R/1. It has been pointed out that it bears the signatures dated

27.09.1989, which makes the panchnama a forged and concocted document. Without entering into this controversy, we hereby observe that the show cause notice within the meaning of Clause (a) of Section 124 of the Act was issued by registered post on 29.09.1989, as revealed in the postal receipt. It is admitted to have been received by the Petitioner in paragraph 13 of the writ petition. No prejudice is shown to have been caused to the Petitioner on account of the receipt of the notice after expiry of six months, which according to Section 110(2) ought to have been given within six months of the date of seizure. Thus, we do not find non-compliance or contravention of the aforesaid provisions. In our considered opinion, learned Single Judge has committed an error firstly in ignoring the significance of the word "given" employed in Section 110(2) as well as Clause (a) of Section 124 of the Customs Act, 1962. Learned Single Judge has further committed a mistake in straightway invoking Section 153 of the Customs Act, 1962, without taking into consideration that the word "served" occurring in it is missing in Section 110(2) as well as Section 124 of the Act. Instead, the word "given" is there in these two provisions which goes to show that the show cause notice must be given before expiry of six months and issuance of notice by registered post within six months is a sufficient compliance in the eye of law, more so, when the same has been received by the Respondent as has been admitted in paragraph 13 of the writ petition. Neither Section 110(2) nor Clause (a) of Section 124 of the Act contemplates service of notice in strict sense within a period of six months from the date of giving/issuing the same by registered post which mode has been prescribed under the Act . It merely speaks about giving of the notice. Keeping in view the object and purpose of the two provisions, it cannot be said that the legislature intended to achieve service of notice within six months from the date of seizure. Thus, the impugned order is also found to have been passed, without considering the object and purpose of the said provisions. Consequently, the impugned order is not found sustainable in law.

17. Resultantly, the appeal succeeds and is hereby allowed. The impugned order is hereby set aside with no order as to costs.

C. c. as per rules.