

(1995) 09 CAL CK 0028
In the Calcutta High Court
Case No : Writ Appeal F.M.A.T. No. 923 of 1994

Union of India (UOI)

APPELLANT

Vs

Kanti Tarafdar

RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Customs Act, 1962 — Section 108, 110, 110(1), 110(2), 124
Foreign Exchange Regulation Act, 1973 — Section 67
General Clauses Act, 1897 — Section 27
Gold (Control) Act, 1968 — Section 113, 79

Citation : (1996) 53 ECC 16 : (1996) 63 ECR 160 : (1997) 91 ELT 51

Hon'ble Judges : Umesh Chandra Banerjee, J; Barin Ghosh, J

Bench : Division Bench

Advocate : N.C. Roy Chowdhury and Prantosh Mukherjee, for the Appellant; J.N. Biswas and Primata Das, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—This is an appeal against an order of Ajoy Nath Ray, J. dated 7th March, 1994 passed on a writ petition, where a writ of mandamus had been sought for release of the goods seized by the Customs Authorities and a writ of certiorari was prayed for quashing the show cause notice on the ground that the show cause notice was received by the writ petitioners after expiry of six months from the date of seizure.

2. By the order the learned Judge directed the Appellants, Customs authorities, to return the seized goods to be respondents, writ, petitioners, within four weeks from the date of the order, and further directed that the show cause notice may be proceeded with, but only after return of the seized goods. The order further provided that the writ petitioners will be entitled to a hearing as provided by law and the proceedings shall be contained if, at all, in accordance with law and the writ petitioners will be entitled, if aggrieved, to move afresh against the order to be passed upon such further proceedings.

3. The facts of the case are summarised below :-

On 14th November, 1992 a truck bearing No. WBL 5972 was intercepted by the personnel of the Border Security Force. The truck at the time of such interception was loaded with cycle parts.

On 14th November, 1992 such cycle parts were handed over to the Inspector of Customs who in turn seized such cycle parts on the same day after preparation of an inventory of such seized goods.

On 17th November, 1992 the writ petitioners, ten in number, claiming to be owners of such seized cycle parts, applied for release of the same.

On 21st April, 1993 the Superintendent of Customs, Petrapole Circle, issued summons u/s 108 of the Customs Act, 1962 (hereinafter referred to as the "Act") to the writ petitioners directing them to appear before him in person or by authorised agents on 13th April, 1993 (wrongly written as 1992) at 12 hours.

On 4th May, 1993 the Superintendent of Customs, Petrapole Circle, recorded statement of the writ petitioners in connection with the subject case.

Thereafter, on 13th May, 1993 notices to show cause were issued and the same were sent to the writ petitioners by registered post. There is no disputes that the said notices were posted on 13th May, 1993 itself.

On 17th May, 1993 the said notices were received by the writ petitioners.

On 3rd June, 1993 the writ petitioners submitted their written replies to the Adjudicating Officer and contended that the seized goods should be returned to them.

On 15th July, 1993 the writ petitioners applied for personal hearing, but the same was of no avail.

In this background on 13th October, 1993 the writ petition was filed.

3. The writ petition was contested by the Customs Authorities by filing an affidavit to which a reply was filed by the writ petitioners. Thereafter, the matter came up for final disposal before Ray, J. when the learned Judge passed the order referred to above.

4. The learned Judge took into account the following four dates as relevant dates to come to His Lordship's decision :-

14th November, 1992 - Seizure of concerned goods 21st April, 1993 - Issuance of summons for appearance 13th May, 1993 - Issuance of show cause notices under Section 110 of the Act. 17th May, 1993 - Receipt of show cause notices by the writ petitioners.

5. The learned Judge, thereafter, construed the provisions of Sections 110(2) and Section 153 of the Act, a large number of judgments of different Courts and

submissions of the parties and came to the following conclusion :-

"In my opinion, Section 153 cannot control the meaning of the word "given" in Section 110, Sub-section (2), in the cases where the addressee is shown to have actually received the notice. In such cases, the addressee is given notice only upon receipt and not merely upon posting."

6. The main contention of the appellants in this appeal, as contended by Mr. Roy Chowdhury, is that the word "given", as occurring in Section 110(2) of the Act, means giving (of notice) in the manner provided in the Act and in particular in Section 153 of the Act and not giving (of notice) in a manner not contemplated by the Act.

7. On the other hand, the respondents through their learned Counsel submitted that the word "given" as occurring in Section 110(2) of the Act should be strictly construed and in the manner as construed by the learned Judge.

8. Section 110(2) of the Act runs as follows :

"Section 110. Seizure of goods, documents and things.

(2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure 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 Collector of Customs for a period not exceeding six months."

9. Section 110(2) of the Act, therefore, provides giving of notice as contemplated by Section 124(a) of the Act within six months from the date of seizure of the goods as a condition to retain the seized goods. In the event no such notice is given, the seized goods are liable to be returned.

Section 124(a) of the Act reads as follows :

"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 :

Provided that the notice referred to in Clause (a) and the representation referred to in Clause (b) may, at the request of the person concerned be oral."

11. Section 124(a) of the Act therefore, provides for issuance of a written notice in case the concerned goods are desired to be confiscated, but such notice at the request of the person concerned may be oral. In such notice the grounds for confiscation should be indicated.

12. Section 153 of the Act is as follows :

"153. Service of order, decision etc. - Any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in Clause (a), affixing it on the notice board of the Customs House."

13. Section 153 of the Act provides that the notices issued under the Act should be served in the manner as provided for in the said section. The person serving such notice has two options, one is to tender or to physically deliver and the other is to send it by registered post. The section, further, provides that in case either tendering or sending by registered post is not possible, then such service may be effected by affixation.

14. Prior to Ray, J. in the order under appeal, three other learned Single Judges of this Court dealt with similar problems but their conclusions had been different.

15. T.K. Basu, J. (as His Lordship then was) in the case of Jayantilal Morakhia Vs. Union of India and Others, concurred with the ratio of the judgment of the Division Bench of the Madras High Court, in the case of B. Bhoormal Tirupati Vs. The Additional Collector of Customs, Custom House, Madras, , and held that there was due service of notice u/s 110(2) of the Act within six months u/s 153 of the Act read with Section 27 of the General Clauses Act, where goods were seized on 9th June, 1970, notice was issued on 27th November, 1970, but the same was received on 20th March, 1971.

16. Tarun Chatterjee, J., in the case of Oyatape Fibres Pvt. Ltd. Vs. Collector of Customs, was dealing with a case where goods were seized on 23rd December, 1993, notice u/s 110(2) of the Act was issued on 9th June, 1994 and the same was received by the writ petitioner on 24th June, 1994, and held that the notice was bad since the same reached the writ petitioner beyond six months from the date of seizure by construing the word "given" as occurring in Section 110(2) of the Act to mean actual physical delivery and not mere posting. In the case Tarun Chatterjee, J., did not follow the ratio of the judgment of T.K. Basu, J., in the case of Jayantilal Morakhia v. Union of India (supra), by preferring to construe the word "given" as construed by the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, where the Supreme Court in Paragraph 11 observed as follows :

"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."

17. Ruma Pal, J., in the case of Anil Kumar Das v. Union of India and Ors. (unreported) held that the notice was good when the seizure was effected on 12th December, 1991, notice was despatched on 8th June, 1992 and the writ petitioner received the notice on 15th June, 1992 by principally following the judgment of T.K. Basu, J., in Jayantilal Morakhia's case (supra) and holding that the Supreme Court in K. Narasimhiah's case was construing the word "giving" in its ordinary sense and that "giving" in the Customs Act, 1962 has been specifically defined in Section 153.

18. We are of the view, that we shall concur with the conclusions of T.K. Basu, J., and Ruma Pal, J., for slightly different reasons which are summarized below:

19. In Jayantilal Morakhia's case Supreme Court was construing the plain and simple meaning of the word "given". In that case, however, the Supreme Court was not construing the word "given" as used in the Customs Act, 1962. The Supreme Court in that case was dealing with giving of notice of meeting as provided for in Section 27(3) of the Mysore Town Municipalities Act, 1951, which was held to be a mandatory provision, and which provided, without being controlled by any other provision, that three clear days notice should be given.

20. Ordinarily, the word "given" means actual physical delivery and the Supreme Court in the above referred case also held so.

21. The controversy here is whether the words "is given" as occurring in Section 110(2) of the Act, are controlled by the words "issue of show cause notice" as occurring in Section 124 of the Act and the words "any notice issued under this Act shall be served" as occurring in Section 153 of the Act.

22. Ray, J., while delivering the judgment observed "In other cases, however, with which we are not directly concerned here, where the notice cannot be served by post or otherwise, or has been duly posted, but is not yet received or has had to be posted upon the principal of service by affixation, the word "given" in Section 110(2) might have to be accorded a different meaning in the facts and circumstances of different cases that might rise from time to time. I am not called upon to make any pronouncement in that regard."

23. Ray, J., therefore, held that Section 153 does not control the word "given" in Section 110(2) in certain cases but may control in some other cases.

24. It is well-settled that in considering the true meaning of words or expressions used by the legislature the Court must have regard to the aim, object and scope of the Statute to be read in its entirety. (Supreme Court in the case of State of West Bengal Vs. Union of India,

25. The object in setting a time-limit in Section 110(2) was to expedite proceedings so as not to harass a citizen whose goods may have been wrongfully seized. The object has been stated by M.P. Menon, J., in C.D. Govinda Rao Vs. Additional Secretary to the Government of India and Others, , in relation to Section 79 of the Gold Control Act, which is similar to Section 110 of the Customs Act, as follows :

"The purpose behind Section 79 is two-fold. The first is that confiscation shall be ordered without the concerned party being given a reasonable opportunity of having his say in the matter. The second is that the appropriate authority should make up his mind within six months whether to proceed with confiscation or not. He should make up his mind within six months whether such proceedings should be initiated, and if he fails to do so, the party concerned is entitled to have the Gold seized returned to him."

26. It is true that the Division Bench of the Kerala High Court reversed the decision of M.P. Menon, J. in the case C.V. Govinda Rao Vs. Government of India, , and held that giving of notice u/s 79 of the Gold Control Act means actual reaching of the notice in the hands to whom it was given, but their Lordships in so holding did not consider Section 113 of the Gold Control Act which is substantially similar to Section 153 of the Customs Act. With due respect therefore, we are unable to follow the said decision of the Division Bench of the Kerala High Court.

27. Further our High Court has also taken similar view as that of Kantilal Somehand Shah and Another Vs. Collector of Customs and Central Excise and Another, , at Paragraph 23, a learned Single Judge of this Court held :

"The obvious object behind Section 110(2) of the Act is that a citizen should not be deprived of his right to property indefinitely, upon the mere reasonable belief of a Customs Officer that his property might be confiscated under the Customs Act. That is why a period of six months is prescribed by the legislature to enable the authority concerned to make out a prima facie case for confiscation of the goods already seized. In other words, if within the said period of six months, the officer concerned fails to make out a prima facie case in support of his reasonable belief that the goods are liable to confiscation, the goods seized, should be returned to the person from whose custody they were seized."

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 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 under Section 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.

40. In the case before the Division Bench, Allahabad High Court, in *Alka Watches Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, , no notice had at all been served and an order directing issue of notice had been passed of which knowledge was attributed to the concerned persons and on the basis thereof it was contended that the same amounted to giving of notice. In that context, the Division Bench held that giving of notice does not mean mere passing of an order for the issue of notice by an officer competent to do so, but means due service of the notice to the party concerned. The Division Bench also noted Section 153 of the Act and held that the notice issued u/s 110(2) of the Act should be served by tendering the notice to the party or by sending it by registered post to the person for whom it was intended or to his agent. The Division Bench also concluded that in the case dealt with by their Lordships admittedly no notice was sent by registered post either to the party or to his agent.

41. Therefore, the view that we have adopted here is also supported by the Division Bench of the Allahabad High Court.

42. The cases reported in *Kantilal Somehand Shah and Another Vs. Collector of Customs and Central Excise and Another*, , *Dhirajlal Amritlal Mehta Vs. Union of India*, , and 1 983 (14) E.L.T. 1715 (Bom) as noted by Ray, J., are cases of extension of time under proviso to Section 110(2) without notice, which have no bearing with the present case. In *Mrs. Payal Ashok Kumar Jindal Vs. Captain Ashok Kumar Jindal*, the Supreme Court was dealing with service of a notice by family court, which too has no bearing. In the case reported in *Oyatape Fibres Pvt. Ltd. Vs. Collector of Customs*, a Division Bench of the Rajasthan High Court¹ was dealing with a case under Foreign Exchange Regulation Act, but overlooked the provisions of Section 153 of the Customs Act which was made applicable to F.E.R.A. by Section 67 thereof.

43. In that view of the matter, we set aside the order under appeal and dismiss the writ petition inasmuch as admittedly the notice was sent by registered post within six months from the date of seizure.

44. We, however, direct that the show cause notice will be proceeded with and appropriate opportunity of hearing should be given to the respondents/writ petitioners as they are entitled to in law.

45. No order as to costs.

Umesh Chandra Banerjee, J.

46. I agree.