

(1987) 12 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 162 of 1982

Vilayat Hussain

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-12-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12
Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 110, 110(1), 110(2), 124

Citation : (1997) 95 ELT 19

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

Judgement

P.C. Pathak, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing the impugned order dated 22-9-1980 (Annexure P-9), recovery proceedings in pursuance of the notice (Annexure P-3) and proceedings in Criminal Case No. 3068 of 1981.

2. The petitioner is a warehouse licensee for storage of non-duty paid un-manufactured tobacco. He has his godowns in Millinoniganj, Jabalpur. The petitioner alleges that when he had gone to Gujarat for purchase of tobacco, the Central Excise Preventive Officer and local Central Excise Officers visited the warehouse and sealed all the five godowns on 29-5-1978 vide Annexure R/6. The stock of all the five godowns were checked between 5-7-1978 and 21-10-1978 except from 7-8-1978 to 13-8-1978 and 25-8-1978 to 27-9-1978 and was seized as per Panchanama Annexures R/11 to R/65.

3. A show cause notice dated 2-1-1979 (Annexure P/7) was served on the petitioner requiring him to show cause to the Collector, Central Excise as to why penalty should not be imposed, duty on unmanufactured tobacco found short should not be demanded and tobacco should not be confiscated. The petitioner filed a reply (Annexure R/67) denying his liability to pay any penalty and/or duty or that the stock of tobacco and was liable to be confiscated.

4. The Collector, by his order dated 26-3-1980 (Annexure P/8), confiscated 577 bags of tobacco weighing 1520 Kgs. valued at Rs. 19,500/- but allowed the option to redeem it by payment of Rs. 15,000/- within three months from the date of receipt of the order. The penalty of Rs. 2,000/- each was also imposed on him.

5. The petitioner filed an appeal before the Central Board of Revenue of Excise and Custom vide memo of appeal (Annexure P/4). By the impugned order (Annexure P-9), the appeal was partly allowed, namely, the redemption amount was reduced from Rs. 15,000/- to Rs. 10,000/- and the penalty was reduced to Rs. 1,000/- on each count.

6. The petitioner preferred a revision before The Central Government against the said order which is still pending. The petitioner also filed an application of stay which was refused. The recovery proceedings were initiated for the amount found due against him. The Collector of Customs and Excise also prosecuted the petitioner vide Criminal Case No. 3068 of 1981 in Economics Officences Court at Indore vide Annexure P/10. The petitioner, therefore, approached this Court for the aforesaid reliefs.

7. The petitioner submits that there is no provision in the Central Excises and Salt Act, 1944 for seizure of account books and the stock. It is only with the aid of Section 110(a) of the Customs Act, 1962 which had been adopted for the purposes of Central Excises and Salt Act by Notification No. 68-A/63-C.E., dated 4-5-1963 issued u/s 12 of the Central Excises and Salt Act that the said power could be exercised. Section 124 of the Customs Act provides for issue of show cause notice before confiscating any goods or imposing any penalty. Section 110(2) of the said Act provides that 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. The petitioner submits that the seizure within the meaning of Section 110 was done on 29-5-1978 when Flying Squad of the excise department sealed the petitioner's godowns. The show cause notice dated 2-1-1979 having been issued beyond the limitation of six months, the order of confiscation is bad.

8. On behalf of the respondents, it was argued that no seizure was done on 29-5-1978. On that date, the godowns were sealed and the actual seizure start on and from 5-7-1978. Therefore, the limitation of six months had to be computed from 5-7-1978 and the show cause notice issued on 2-7-1979 is. well within the prescribed period. The seized goods (sic). It was also argued that the petitioner had evailed of the remedy of the revision prescribed under the Act and the same is pending even today. The petitioner could approach this Court only after exhausting the alternative remedy. Reliance was placed on J. Mohapatra and Co. and Another Vs. State of Orissa and Another, .

9. Relevant portion of Section 110 of the Customs Act is reproduced below:

"110. Seizure of goods, documents and things : (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with previous permission of such officer.

(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 of not exceeding six months."

Sub-section (2) provides that 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.

10. Section 124(a) is reproduced below :-

"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."

11. Section 124(a) makes it obligatory for the officer concerned to give a statutory notice of the grounds on which he proposed to confiscate the goods and/or to impose a penalty and this notice has to be given within six months of the seizure of the goods failing which the goods shall be returned to the person concerned.

12. The question for consideration in the present case is whether the limitation of six months should be counted from 29-5-1978, the date of sealing of the godowns [or] from 29-5-1978, the date of sealing of the godowns or from 5-7-1978 on and from which date the inventories were prepared. In other words, it has to be seen whether "sealing" of the godowns amounts to seizure within the meaning of Section 110 of the Customs Act. The respondents in their return pleaded that on receipt of the information as to the evasion of duty and fraudulent measures adopted by the petitioner, the authorities made a surprise check of the petitioner's warehouse on 29-5-1978 regarding the stocks and the accounts, but on reaching the premises, the officials discovered that the petitioner was out of station. The petitioner's brother Mohd. Hussain and his son Salim, who had the

keys and the records in their possession were told to open the premises of the warehouse for inspection, but they declined on the ground that they had no authority from the petitioner. However, on inspection of the accounts, several irregularities, as detailed in para 6 of the return, were noticed. Since it was found that the warehouse was operated even in the absence of the petitioner by the members of the petitioner's family who declined to allow inspection, the Squad sealed all the five godowns of the petitioner. Panchanama (Annexure R/5) was prepared on the same day preventing any further operation from the warehouse by any one in the absence of the petitioner and till such time the petitioner returned to Jabalpur and the checking was completed by the authorities. The records available with Mohd. Hussain and Salim were also detained and withdrawn as per Panchanama, Annexure R/6.

13. In *Collector of Customs and Central Excise, West Bengal and Others Vs. Hindustan Motors Ltd. and Another*, a Division Bench of the Calcutta High Court held that an order of Customs Authorities asking the owner of goods not to remove them except with permission may amount to prohibitory order but when there was an overt act of sealing the packed and repacked goods, that amounts to exercise of dominion over the goods and it was an act of seizure of goods within the meaning of Section 110(1) requiring notice to be given u/s 124(a) of the Customs Act. No decision taking a contrary view was placed before us.

14. From the facts narrated above, there is no manner of doubt that action of the Squad in sealing the five godowns and removing the books of accounts amounted to seizure within the meaning of Section 110 of the Act. Therefore, the limitation of six months has to be computed from 29-5-1978. We may also usefully refer to *J.R. Sehgal Vs. Collector of Central Excise, New Delhi and another*, wherein a T.V. seized was not physically removed. The Court found that the officers seized the set, but did not physically remove the same because of the petitioner's undertaking. The Court held that it was a seizure within meaning of Section 110 and there being non-compliance of Section 110(2) read with Section 124, the department was bound to return the T.V. set to the petitioner. On counting the limitation from 29-5-1978, We find that the respondents failed to take action within the period of six months the reform. The show cause notice dated 2-7-1979 was beyond the prescribed period. We, therefore, hold that the impugned order of confiscation and imposition of penalty is within jurisdiction and must accordingly be quashed. The respondents are bound to return the articles seized to the petitioner.

15. As regards criminal prosecution, sufficient particulars of filing of the complaint and other relevant information are wanting. We, therefore, decline to express any opinion on that count. Liberty is reserved to the petitioner to raise all such objections against the maintainability of the complaint as may be available to him and the learned trial court, we hope shall decide them before proceeding with the trial of the case.

16. In view of the foregoing discussions, the petition is partly allowed, the orders

dated 26-3-1980 (Annexure P/8) and dated 22-9-1980. (Annexure P-9) and recovery proceedings in pursuance of the notice (Annexure P/3) are hereby quashed. The respondents are directed to return the seized goods or their value to the petitioner within three months from the date of this order. The petitioner shall be entitled to costs. Counsel's fee Rs. 200/-, if certified. The outstanding amount of security be refunded to the petitioner.