Amit Kumar Vs. Directorate of Revenue Intelligence, New Delhi and a

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SooperKanoon Citation : sooperkanoon.com/1171355

Court : Delhi

Decided On : Jul-24-2014

Judge : Badar Durrez Ahmed

Appellant : Amit Kumar

Respondent : Directorate of Revenue Intelligence, New Delhi and a

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

24. 07.2014 W.P.(C) 416/2014 & CM No.827/2014 PURUSHOTTAM JAJODIA ..Petitioner versus DIRECTORATE OF REVENUE INTELLIGENCE, NEW DELHI & ANR ..Respondents W.P.(C) 417/2014 ..Petitioner AMIT KUMAR versus DIRECTORATE OF REVENUE INTELLIGENCE, NEW DELHI & ANR ..Respondents W.P.(C) 3379/2014 & CM69752014 K.M. UDYOG ..... Petitioner versus DEPUTY COMMISSIONER (ANTI EVASION) CENTRAL EXCISE & ANR. ..... Respondents Advocates who appeared in this case: For the Petitioner : Mr Abhas Mishra, Advocate with Ms Divya Bansal and Mr Abhimanue Shrestha, Advocates For the Respondents : Mr Kamal Nijhawan, Advocate with Mr Dinesh Patel, Advocate for R-1 in W.P.(C) 3379/2014 and for R-2 in W.P.(C) Nos.416/2014 and 417/2014 Mr Satish Aggarwala, Advocate with Mr Sushil Kaushik, Advocate for R-2 in W.P.(C) 3379/2014 and for R-1 in W.P.(C) Nos.416/2014 and 417/2014 CORAM: HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. These three writ petitions raise a common issue with regard to the meaning to be ascribed to the word given appearing in Section 110(2) of the Customs Act, 1962 (hereinafter referred to as the said Act) and in Section 124(a) of the said Act. This pertains to the giving of a notice under Section 124(a) of the said Act informing a person from whom goods have been seized of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Section 110(2) of the said Act prescribes that the upper time limit for retaining the seized goods is of six months, in case no notice in respect thereof is given under Clause (a) of Section 124 of the said Act, from the date the seizure of the goods. Moreover, in case no such notice is given, the goods are mandatorily required to be returned to the person from whose possession they were seized. Of course, the period of six months may, on sufficient cause being shown by the Commissioner of Customs, be extended for a further period not exceeding six months. This is stipulated in the proviso to Section 110(2) of the said Act.

2. The facts in each of these writ petitions need to be set out briefly in order to appreciate the context in which the said expression is to be considered.

3. In W.P.(C) 416/2014 (Purushottam Jajodia vs. Directorate of Revenue Intelligence & Anr.) the seizure of goods took place on 29.10.2012. The period of six months prescribed under Section 110(2) would expire on 28.04.2013. However, the Commissioner of Customs invoked the proviso and extended the period by an order-in-original dated 26.04.2013 by a further six months. Although the order-in-original mentions that the period was extended up to 08.10.2013 for issuance of a show cause notice, in view of the fact that the order expressly records that the period is extended by six months, we are treating the date given in the said order i.e., 08.10.2013 to be read as 28.10.2013. In other words, the notice under Section 124(a) had to be given on or before 28.10.2013. The show cause notice was dated 28.10.2013. It was sent by speed post to the petitioner and the tracking record indicates that the postal item was booked on 29.10.2013 and actually received by the petitioner on 30.10.2013. It is the case of the petitioner that signing of the show cause notice on 28.10.2013 was not sufficient compliance

and that the same should have been received on or before 28.10.2013. It was further submitted that the notice was itself posted on 29.10.2013 which was, in any event, beyond the terminal date of 28.10.2013.

4. We shall now advert to the facts in the case of W.P.(C) 3379/2014 (K.M. Udyog vs. Deputy Commissioner (Anti Evasion) Central Excise & Anr). Here the seizure of Rs.10,00,000/- (Rupees Ten Lakhs) cash took place on 12.08.2011. The six-month period would expire on 11.02.2012. The show cause notice under Section 124(a) of the said Act was dated 10.02.2012 and it was also dispatched on 10.02.2012, both within six months of the date of seizure. However, the said notice under Section 124(a) of the said Act was received by the petitioner on 13.02.2012, when the period of six months from the date of seizure had expired. It was once again contended on behalf of the petitioner that this was not sufficient compliance of the provisions of Section 110(2) read with Section 124(a) of the said Act as the notice was received beyond the six-month period and, therefore, the respondents were liable to release the sum of Rs.10,00,000/- (Rupees Ten Lakhs) which they had seized, unconditionally.

5. The facts in W.P.(C) 417/2014 (Amit Kumar vs. Directorate of Revenue Intelligence) are that the goods including the currency were seized on 09.10.2012. The six-month period would expire on 08.04.2012 but the Commissioner of Customs passed an order on 08.04.2013 itself extending the period by a further six months. It is stated by the petitioner that on 19.10.2013 a letter of that very date i.e., 19.10.2013 was received by the petitioner through a Special Messenger sent by the respondent. The letter indicated that earlier a show cause notice dated 08.10.2013 had been sent by speed post but the same could not be delivered as the house was found locked. Consequently, the said notice was being sent again through a Special Messenger. It was, therefore, requested that the petitioner should acknowledge receipt of the notice. As, according to the petitioner the notice was received beyond the period of six months, the petitioner requested for unconditional release of the goods including the currency. The same was not accepted by the respondent and, therefore, the petitioner has approached this Court.

6. From the facts narrated above, it is evident that the question which arises for consideration in each of these three writ petitions is the same. The question is whether mere dispatch of a notice under Section 124(a) of the said Act would imply that the notice was given within the meaning of Section 124(a) and Section 110(2) of the said Act?.

7. The learned counsel for the petitioners placed reliance on a decision of the Supreme Court in the case of K. Narsimhiah vs. H.C. Singri Gowda: AIR 1966 SC330 They also placed reliance on a decision of a Division Bench of the Gujarat High Court in Ambalal Morarji Soni vs. Union of India and Ors: AIR 1972 GUJ126 Based on these decisions, the sum and substance of the submission on behalf of the petitioners was that the expression given used in Section 110(2) and also in Section 124(a) of the said Act was distinct and different from the word issued or served. Relying upon the said decisions, the learned counsel for the petitioners submitted that by the use of the word given the legislative intent was clear that the notice had to be received by the person concerned or the notice had to be offered/tendered and refused by the person concerned. Mere dispatch by post would not be covered by the word given as appearing in the above mentioned provisions of the said Act.

8. On the other hand, the learned counsel appearing on behalf of the respondents submitted that Section 153 of the said Act also needed to be considered. According to them, the said provision dealt with the manner in which any order or decision or summon or notice which is issued under the said Act is required to be served. Referring to Section 153(a) of the said Act, the learned counsel appearing on behalf of the respondents submitted that the moment a notice is tendered or sent by registered post or by an approved courier, that amounts to service of the notice and the actual receipt by the noticee is not a relevant consideration. Consequently, they submitted that in each of the three cases at hand, the notices had been sent by registered post within the stipulated period (either original or extended) as prescribed under Section 110(2) of the said Act and, therefore, the goods were not liable to be released. The learned counsel for the respondents placed strong reliance on the decision of the Calcutta High Court in the case of Union of India vs. Kanti Tarafdar:

1997. (91) ELT51(Cal.). They also placed strong reliance on the decision of a Division Bench of the Madhya Pradesh High Court in the case of CCE, Indore vs. Ram Kumar Aggarwal:

2012. (280) ELT13(MP). Several other decisions of the Calcutta High Court as also of the Patna High Court and the Punjab and Haryana High Court were referred to by the learned counsel for the respondents but we need not examine them in detail as they essentially follow the decision of the Calcutta High Court in the case of Kanti Tarafdar (supra).

9. Section 110(2) of the said Act reads as under:(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 Commissioner of Customs for a period not exceeding six months. (underlining added) 10. Section 124 of the said Act reads as under: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 with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter: 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. (underlining added) 11. Section 153 of the said Act reads as under: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 of notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs

house. 12. On a plain reading of Section 110(2) of the said Act it is evident that the goods which have been seized under Section 110(1) of the said Act cannot be retained beyond the stipulated period of six months or the extended period of a further six months, if no notice in respect of the goods is given under Section 124(a) of the said Act within the said period. Section 124(a) of the said Act clearly stipulates 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 a penalty. It is evident that no order of confiscation can be passed unless and until such notice is given to the concerned person.

13. The key words, according to us, are -informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. The object of Section 124(a) is that the person concerned had to be informed of the grounds on which the confiscation of the goods is to be founded. This can only happen when the person from whom the goods have been seized, receives the notice and is capable of reading and understanding the grounds of the proposed confiscation. Therefore, according to us, upon a conjoint reading of Section 110(2) and Section 124(a) of the said Act, the notice contemplated in these provisions can only be regarded as having been given when it is actually received or deemed to be received by the person from whom the goods have been seized. The whole object of giving the notice under Section 124(a) of the said Act is to inform the person concerned of the grounds of the proposed confiscation or proposed imposition of penalty as also to give him an opportunity to make a representation in writing so that an order confiscating or not confiscating the goods may be passed.

14. The Supreme Court in K. Narsimhiah (supra) was considering the meaning of the word given as used in the proviso to Section 23(a) of the Mysore Town Municipalities Act, 1951. The relevant proviso was as under:Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the whole number of the Councillors and at least fifteen days notice has been given of the intention to move the resolution. (underlining added) 15. The view expressed by the Supreme Court was as under:11. This brings us to the main contention that three days notice of the special general meeting was not given and

so the meeting is invalid. We find it difficult to agree with the High Court that sending the notice amounts to giving the notice.

12. 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 dispatches 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. 16. We may note that the Supreme Court considered the ordinary meaning of the word giving and observed that it would not be complete unless it had reached the hands of the person to whom it has to be given. The Supreme Court, however, distinguished the ordinary meaning from that the meaning as ascribed to it in law. The Supreme Court noted that in law giving is complete in many matters where it has been offered to a person but not accepted by him. Consequently, the Supreme Court observed that tendering of a notice is in law equivalent to giving a notice even though the person to whom it is tendered refuses to accept it. But, more importantly, the Supreme Court observed that there is no authority or principle for the proposition that as soon as the person with a legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given, the giving is complete. If we apply the observation of the Supreme Court to the fact situation of the present cases, it is clear that the mere issuance or dispatch of the notices to the petitioners would not amount to giving of the notice as contemplated both in the ordinary sense as also in law.

17. The view expressed by the Supreme Court was followed as it should have been, by the Gujarat High Court in the case of Ambalal Morarji Soni (supra) while construing the very word given appearing in Sections 110(2) and 124(a) of the said Act. After referring to the Supreme Court decision in K. Narasimhiah (supra)

the Division Bench of the Gujarat High Court observed as under:6. In our opinion, this decision of the Supreme Court clearly indicates that looking to the object for which the notice is to be given as provided in that particular piece of legislation, the Court has to consider whether the giving of the notice with the particular object in view is so material as to render the proceedings subsequent to non compliance with such provision invalid or in the present case, whether the notice can be said to have been properly given as contemplated by law. The words in Section 124 arethe owner of the goods or such person is given a notice in writing so far as the Customs Act is concerned. Similar words are found in the Gold (Control) Act. The whole object of giving notice is to inform the person concerned of the grounds on which it is proposed to confiscate the goods or to impose a penalty and to give him an opportunity to make a representation in writing within such reasonable time as may be specified in the notice and he must be given reasonable opportunity of being heard in the matter. 7. Giving of the notice contemplated by Section 124 of the Customs Act and Section 79 of the Gold Control Act means that the notice must have been received because as pointed out by the Supreme Court in Narasimhiahs case, AIR 1966 SC330(supra) the giving of the notice is not complete unless and until it reaches the person concerned or its actual tender to him. Merely dispatching of the notice to the address of the person does not, complete the giving of the notice. In the instant case, therefore, the fact that the respondents dispatched the notices by post on November 5, 1968, would not complete the giving of the notice. The giving of the notice should have been complete on or before November 6, 1968 i.e., notices should have reached the petitioner on or before November 6, 1969 or should have been tendered to him before that date. That was not done in the instant case and, therefore, as from November 7, 1969, the civil right to get back the seized goods accrued to the petitioner. (underlining added) 18. From the above, it is evident that the Gujarat High Court had clearly held that mere dispatch of a notice to the address of a person does not complete the giving of a notice and that the same would only have been completed if the notice had reached the person concerned or after having been tendered to him had been refused by him. We may say at this juncture itself that we are in full agreement with the decision of the Gujarat High Court in the case of Ambalal Morarji Soni (supra) and are, therefore, of the view

that the notices in the present petition had not been given before the terminal date specified in Section 110(2) of the said Act.

19. However, since a different line of approach has been taken by the Calcutta High Court which has been followed by the Punjab and Haryana High Court, the Madhya Pradesh High Court and the Patna High Court, we would like to refer to the decision in Kanti Tarafdar (supra) which is the fountain head of that stream of decision. There is no doubt that the decision of the Calcutta High Court in Kanti Tarafdar (supra) completely supports the contention of the learned counsel for the respondents. But, with respect, we do not agree with the said decision. We may point out that the decision has been arrived at on the premise that Section 124 of the said Act requires that a notice be issued as against a notice being given. This would be evident from the following paragraphs of the said decision: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. 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 under Section 110(2) should be a notice issued under Section 124 of the Act and any notice, issued under the Act, which obviously includes a notice under Section 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 under Section 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. (underlining added) 20. We are afraid that we cannot agree with the observation of the Calcutta High Court that the word given as occurring in Section 110(2) of the said Act is controlled by the word issue of show cause notice as occurring in Section 124 of the said Act. The body of the provision of Section 124 of the said Act nowhere uses the expression issue of show cause notice. It is only the heading of that Section which uses that expression. On the contrary, the body of Section 124(a) of the said Act uses the exact same expression given as

used in Section 110(2) of the said Act. Therefore, the very basis of the Calcutta High Court decision in Kanti Tarafdar (supra) is, with respect, incorrect. WP(C) 416/2014, 417/2014 & 3379/2014 expressed in paragraph 31 of the said decision where, once again, it is presumed that the word issued had been used in Section 124(a) of the said Act. We are also not in agreement with the observation that the word given used in Section 110(2) and Section 124(a) of the said Act is in any manner controlled by Section 153 of the said Act. In our view, in the context of the present cases, Section 153 would only define the mode and manner of service and not the time of service or when a notice can be said to have been given.

21. At this juncture, since an argument has been raised based on Section 27 of the General Clauses Act, 1897, it would be pertinent to refer to the said provision which reads as under:27. Meaning of service by post- Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. 22. The argument raised on the basis of Section 27 of the General Clauses Act, 1897 on behalf of the respondents was that the expressions serve, given and send were used interchangeably and, therefore, the word given used in Section 110(2) and Section 124(a) of the said Act would also mean served. Therefore, according to them, since Section 153 of the said Act deals with service of notices, mere dispatch by registered post would amount to service of the notices and, therefore, would amount to giving of the notices under Section 124(a) of the said Act. We do not agree with this submission made on behalf of the learned counsel for the respondents inasmuch as they have ignored the last phrase used in Section 27 of the General Clauses Act, 1897 which is to the following effect to have been effected at the time at which the letter would be delivered in the ordinary course of post. 23. In each of the cases before us, the show cause notices under Section 124(a) of the said Act bears the dates which happens to be either the last date or the penultimate date of the stipulated period under Section 110(2) of the said Act.

It cannot be expected that a document sent by registered post would be delivered on the very same day or even the next day in the ordinary course of post. Furthermore, Section 27 of the General Clauses Act is qualified by the words unless a different intention appears. WP(C) 416/2014, 417/2014 & 3379/2014 different intention is discernible from the expression informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Unless a person receives the notice how can he said to be informed of the said grounds?. Therefore, we do not see as to how Section 27 of the General Clauses Act, 1897, would in any way come to the aid of the respondents.

24. The decision of the Madhya Pradesh High Court in CCE, Indore (supra) also relies on Kanti Tarafdar (supra). We may point out that both the decisions, in Kanti Tarafdar (supra) and CCE, Indore (supra), noticed the Supreme Court decision in K. Narasimhiah (supra) but did not follow the same for reasons to which we do not subscribe. In CCE, Indore (supra) also the Madhya Pradesh High Court came to the conclusion that it did on the understanding that Section 124 of the said Act requires issuance of a show cause notice. This would be evident from paragraphs 8 and 9 of the said decision which read as under:8. 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 indicated by the legislature in express manner or by necessary implication.

9. 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 Section153 of the said Act. 25. While the Madhya Pradesh High Court was right in observing that the object of Section 110(2) and Section 124(a) of the said Act read together was to apprise the concerned person of the grounds on which the confiscation of the goods or imposition of penalty was proposed, with respect, it was wrong when it concluded that when the legislature had used the words notice is given it would obviously mean that the notice must be issued within six months of the date of seizure. In our view, the expression notice is given does not logically translate to the conclusion that notice must be issued within the stipulated period.

26. For the above reasons, we do not agree with the view taken by the Calcutta High Court in Kanti Tarafdar (supra) which has been followed by some other High Courts. We find ourselves to be in entire agreement with the view taken by the Gujarat High Court in Ambalal Morarji Soni (supra) which has correctly placed reliance on the Supreme Court decision in K. Narasimhiah (supra).

27. Consequently, as none of the petitioners reviewed the notices under Section 124(a) of the said Act within the time stipulated in Section 110(2) thereof, the writ petitions are allowed and the respondents are directed to release the goods including the currency seized from the petitioners forthwith, unconditionally. There shall be no order as to costs. BADAR DURREZ AHMED, J SIDDHARTH MRIDUL, J JULY24 2014 dn