

Collector of Customs and Central Vs. Satya Kumar Mishra

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-1986

Reported in : (1986)(8)LC52Tri(Delhi)

Appellant : Collector of Customs and Central

Respondent : Satya Kumar Mishra

Judgement :

1. This appeal against the Order-in-Appeal No. 64-Ind./84 passed by the Collector of Customs (Appeals), New Delhi, raises the question of construction of Sub-section (2) of Section 110 of the Customs Act, 1962.

2. Brief facts of the case so far as relevant for the purpose of deciding the controversy in hand are that on 29-6-1982 some contraband goods including cash Rs. 9, 605/- were seized by the Police officers, Torwa Police Station, Bilaspur, from the respondent, Shri Satya Kumar Mishra. On information, the Central Excise Officers on 30-6-1982 visited the Police Station and seized the contraband goods and the cash. A show-cause notice under section 110 (2) of the Customs Act was sent by registered post on 15-12-1982, but the said registered cover was returned by the Postal authorities with the remark "N.F.15-12-1982, 16-12-1982 and out of station deposited for 7 days on 17-12-1982 "and" enquired about the addressee as per the address. It was told that he has not returned and it is not known when he will be returning. Hence returned to the sender on 28-12-1982." Thus the said registered cover was received back as undelivered on 30-12-1982.

Thereupon on 31-12-1982, the show-cause notice was sent to the Superintendent, Central Excise, Raigarh, for personal service on the respondent, which was served on 7-1-1983. After the usual enquiry, the adjudicating authority vide his Adjudication order No. VIII (Cus.) 10-5/82/Adj/12623-28 dated 17-9-1983 absolutely confiscated the seized contraband goods including cash and also imposed a penalty of Rs. 5,000/- on the respondent. Against this order, the respondent preferred an appeal before the Collector of Customs (Appeals), New Delhi, which was allowed by the Collector of Customs (Appeals) vide his Order-in-Appeal.

3. Before the Collector of Customs (Appeals), the respondent urged many points, but the learned Collector of Customs (Appeals) instead of deciding the appeal on merits allowed the appeal on the preliminary ground that the show-cause notice was not issued within the period of six months as provided for under Section 110(2) of the Customs Act.

According to him, Section 110(2) of the Customs Act requires not only the issuance of the notice within six months from the date of the seizure of the goods, but it also means that a notice must be served within the period of six months.

4. In the instant case, notice of hearing was issued to the respondent intimating him that the appeal will be heard on 10-1-1986. But, instead of giving appearance the respondent submitted his written arguments with the request that the case may be decided in the light of written arguments as his counsel was unable to travel.

5. On the date of hearing, i.e. 10-1-1986, we heard Shri Shishir Kumar, the learned SDR, and also considered the written submissions made by the respondent. After hearing the arguments, we allowed the appeal with the observations that a written order will follow.

6. In order to appreciate the controversy in hand, it would be useful to extract the relevant provisions of the Customs Act. The material portion of Section 110 of the Customs Act is in these terms :- "(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 the 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 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." "In every case under this chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged- (a) without limit, by a Collector of Customs or a Deputy Collector of Customs; (b) where the value of goods liable to confiscation does not exceed twenty-five thousand rupees, by an Assistant Collector of Customs; and (c) where the value of the goods liable to confiscation does not exceed two thousand five hundred rupees, by a gazetted officer of Customs lower in rank than an Assistant Collector of Customs," "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), by affixing it on the notice board of the Customs house." 9. On the strength of the aforesaid provisions, the question that arises as to when the notice contemplated by Section. 110(2) of the Customs Act can be said to have been 'given' as the appellant contends; when it is issued and reaches the person concerned or when can it be said to have been given until when it is actually received by the person concerned, as the respondent contends. In other words, the contention is whether the words "given a notice" used in Section 110(2) of the Customs Act should be construed as meaning actual delivery.

10. In support of the contention that the actual delivery of the notice contemplated by Sub-section (2) of Section 110 of the Customs Act is not necessary, the learned SDR has relied on the following judgments : 3. B. Bhormal Tirupati v. Additional Collector of Customs AIR 1974 MAD. 224 (DB) 4. C.D. Govendrao v. Additional

Secretary to the Government of India 1982 E.L.T. 270 (KER) Whereas the respondent in his written submissions has relied on the following judgements :- 11. At the outset, it may be stated that a bare perusal of Sub-section (2) of Section 110 of the Customs Act makes it clear that it is couched in negative words and provides that where no notice is "given" under Clause (a) of Section 124 of the Customs Act within six months of seizure of the goods, the goods shall be returned to the person from whom they were recovered. It does not speak of actual delivery.

12. In the case of K. Narasimhiah v. Singri Gowda and Ors.-AIR 1966 S.C. 330, their Lordships of the Supreme Court had an occasion to deal with the meaning of the expression "giving" while dealing with the provisions of Section 27(3) of the Mysore Town Municipalities Act, 1951. Their Lordships observed :- "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." Thus, from the said observations, it is clear that as soon as the person with a legal duty to give the notice despatches the notice and it has reached the hands of the person to whom it was given, but not accepted by him on being offered or where it has reached to the address of the person to whom it was given, but could not be delivered because he could not be found, "giving" is complete in the eye of law. Thus, the said case relied upon by the respondent in his written submissions has not help him at all. On the contrary, it helps the appellant. It may also further be added that in the case of K. Narasimhiah v. Singri Gowda and Ors. (supra) admittedly the notices of requisite three days of calling a meeting on 14-10-1963 as contemplated by the provisions of the Mysore Town Municipalities Act, 1951, were sent on 10th October but they were actually served on the 11th, 12th and 13th. It is under these circumstances that their Lordships held that "giving" of notice was not complete inasmuch as the Councillors of the Municipality received less than three clear day's notice of the intended meeting. In that case, it was nobody's case that the said notices were offered to the Councillors concerned but could not be delivered as the Councillors concerned could not be found. The

second case of *Ambalal Morarji Soni v. Union of India and Ors.*-AIR 1972 Guj. 126 relied on by the respondent is based on the observations made by their Lordships of the Supreme Court in the case of *K. Narasimhiah v. Singri Gowda* (supra) and is distinguishable on the facts of that case. In that case, admittedly the two show-cause notices as provided under Section 110 read with Section 153 of the Customs Act and Section 79 read with Section 113 of the Gold (Control) Act, 1968, were handed over to the Postal Authorities on November 5, 1969 for delivery to the assessee but they were actually delivered to the assessee on November 8, 1969. In that case also, it was nobody's case that the said show-cause notices could not be delivered earlier by the Postal Authorities as the assessee could not be found.

13. On the other hand, the controversy in hand is fully covered by the law laid down by the Hon'ble Kerala High Court in the case of *Ambali Karthikeyan v. Collector of Customs*-1971 Kerala L.T. 537. In that case the question arose whether the words "give notice" used in Section 110(2) of the Customs Act should be construed as meaning actual delivery. Hon'ble Iaac J. took the view that what was relevant was the issuing of notice in any one of the manners prescribed by Section 153 of the Customs Act, and that the date of actual receipt by the party was not relevant. The Kerala High Court reiterated the same view in the case of *C.D. Govind Rao v. Additional Secretary to the Govt. of India and Ors.*, 1982 E.L.T. 270. While repelling the contention that "giving" is different from issuing, sending or forwarding and nothing short of physical delivery of the written notice can satisfy the requirements of Section 79 of the Gold (Control) Act, which is similar to Section 110(2) of the Customs Act, observed- "If the word "give" is understood as equivalent to "putting in possession of" the party concerned could easily defeat the provisions of the statute by simply refusing to take possession of the notice taken to him. He could evade the notice by remaining away from his address. He could also refuse to receive the notice when it is physically taken to him and presented for acceptance. The appropriate authority could not plant it on his persons against his will. If the failure of the appropriate authority to put the concerned person in physical possession of the notics would invalidate all proceedings taken after six months, then all that an interested party has to do to defeat the provisions of the Act is to refuse to receive it when tendered. An

interpretation likely to defeat the statutory intent cannot be accepted.

The position is made clear by Section 113 of the Act which provides that any notice "issued" under the Act shall be served by tendering it or sending it by regd. post to the person concerned. The word used in Section 113 is "issue" and not "give". While Section 79 provides for giving notice, Section 113 provides for the manner of doing it. "Issuing notice" by sending it by registered post is a recognised manner of service. It can therefore easily be inferred that all that Parliament intended was that the appropriate authority should send notice in writing by registered post before the expiry of the six months period." A Division Bench of the Madras High Court has also expressed the same view in the case of *P. Bhormal Tirupati v. Addl. Collector of Customs, Madras-AIR 1974 Mad. 224*. In that case also, the notice issued u/s.

110(2) of the Customs Act was returned with the endorsement "Left". The observations made by their Lordships in paragraph 3 of the judgement are pertinent, which run :- "The only point that arises is whether the service by registered post effected on 13-5-1969, which was returned with the endorsement "left", (is sufficient notice. Section 153 of the Act states that any order or decision passed or any summons or notice issued under the Customs 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; Sub-section (b) of Section. 153 need not be referred to as it does not arise in this case. A notice had been sent by registered post duly addressed to the appellant. The section requires that notice shall be served by sending it by registered post to the person for whom it is intended.

The section does not require that effective service should be effected by the appellant receiving it. This position is made clear by reference to Section. 27 of the General Clauses Act, which states that where any Central Act requires any document to be served by post then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying 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. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed, pre-paid and posted by registered post. That the notice was sent to proper address, pre-paid and posted by registered post is not under dispute. No other attempt has been made to prove the contrary. The endorsement "left" is not sufficient to prove the contrary. Apart from it, a reading of the section indicates that the proof to the contrary can only be limited to proving that the service had not been effected at the time at which the letter would be delivered in the ordinary course of post. We find no difficulty in coming to the conclusion that there has been proper service of notice." 14. Thus turning to the facts of the case again, we have no alternative but to hold that there has been proper service of notice on the respondent within the stipulated period of six months, as provided u/s.

110(2) of the Customs Act, as the show-cause notice in the instant case was admittedly sent by registered post on 15-12-1982, be within six months from the date of seizure of the contraband goods on 29-6-1982 by the Police or on 30-6-1982 by the Central Excise officers and ultimately returned with the said postal endorsements on 28-12-1982, which is again admittedly within six months from the date of seizure.

Thus, we hold that in the eye of law, "giving" of a show-cause notice as contemplated by Section 110(2) of the Customs Act is completed when it is issued and reaches the person concerned within six months of seizure of the goods. We further hold that under Section 110(2), the duty of the authority concerned is only to give notice within six months of the seizure of the goods. It is not their obligation to effect service beyond the provision of section 153 of the Customs Act.

15. Since the learned Collector of Customs (Appeals), New Delhi has not decided the case on merits, but allowed the appeal on a preliminary ground that the show-cause notice was time-barred coupled with the fact that the respondent is also not available for arguments on merits of the case, we again have no alternative but to remand the case to the Collector of Customs (Appeals), New Delhi, with the direction to decide the case on merits in accordance with the law. We further make

it clear that since we are remanding the case, we do not think it proper to decide the second submission made by the respondent in his written submissions to the effect that the entire adjudication proceedings conducted by the Assistant Collector of Central Excise were without jurisdiction. The respondent is free to take this objection before the Collector of Customs (Appeals), New Delhi, if so advised.

16. In the result, the appeal is allowed and the case is remanded to the Collector of Customs (Appeals), New Delhi to decide the appeal on merits in the light of observations made above.

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