

Sat Pal Vs. Collector of Customs and Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1986

Reported in : (1987)(10)LC336Tri(Delhi)

Appellant : Sat Pal

Respondent : Collector of Customs and Central

Judgement :

1. These two appeals, with the cross objections above noted, were first heard by Shri D.C. Mandal, Member. Under order dated 3-12-85 he had directed that the papers be placed before the President of this Tribunal to constitute a larger Bench for deciding the matter in issue since he observed that there was a conflict between the decisions of the various High Courts and further there was an earlier order of this Tribunal with the conclusions of which he was not inclined to agree.

Subsequently, under orders of the President, the two appeals with the connected cross objections were heard by a Bench consisting of S/Shri M. Santhanam and D.C. Mandal, Members. Under order dated 13-2-86 they formulated the point of difference between them as "whether the proceedings under Section 110 and 124 of the Customs Act, 1962 and the corresponding provisions under Sections 66 and 78 of the Gold (Control) Act, 1968 are independent or inter-dependent" Under the said order they had directed that the papers be placed before the President of the Tribunal for such action as deemed fit and necessary under Section 129C(5) of the Customs Act and Section 81D of the Gold (Control) Act, 1968. Thereafter the President had directed that in accordance with the above provisions the matter be

heard by the present Bench. It is in these circumstances that we have heard submissions of both sides on the point of difference between the two Members of the Bench which passed the order dated 13-2-1986.

2. We have heard Smt. Archana Wadhawa, Advocate for the appellants and Smt. Nisha Chaturvedi for the Department.

3. The facts of the case are set forth in detail in the order of Shri Mandal dated 3-12-85. He has further mentioned therein that the learned Advocate for the appellants submitted that she had no arguments to submit on the factual question of the recovery of the gold from the appellants. Her submissions were entirely on points of law and specifically related to the question whether the appellant was entitled to return of the gold seized, the contention being that in so far as no proper notice had been given within 6 months from the date of seizure, the extension of - time for issue of notice having been granted without hearing the appellant also, the gold was liable to be returned to the person from whom it was seized in terms of Section 110 of the Customs Act and the corresponding provisions in the Gold (Control) Act and hence the subsequent proceedings resulting in the order of the Collector directing confiscation of the goods were void and the appellant was therefore entitled to return of the gold. As earlier mentioned, it was this question of the validity of the proceedings for confiscation, in spite of notice not having been issued within 6 months from the date of seizure, that has been referred to us for decision in view of the difference in opinion between the two members who heard the appeal, 4. At the commencement of her submissions before us Smt. Wadhawa wanted to raise a preliminary contention that it was her submission before the Bench consisting of S/Shri M. Santhanam and D.C. Mandal that they were not entitled to hear submissions and that in view of the said submission we would also not be entitled to hear submissions of. pass orders. She stated that her contention before the earlier Bench was that Shri Mandal who initially heard the matter was bound to have followed the Delhi High Court judgment reported in 1983 ELT 1715 (Shanti Lal Mehta v. Union of India) and the decision of this Tribunal in Vishwanath Pandey v. Collector of Customs (1984 Vol. 16 ELT 404) and the reference by him to the President for constituting a larger bench was itself incompetent. When it was pointed out to her that there is no reference in the order of the Bench dated 13-2-

86 about any such submission having been raised by her before the said Bench, she stated that she did raise the said submission but unfortunately the Bench had failed to advert to the same in their order. In the absence of any reference in the order of the Bench to any such submission we are not inclined to accept the submission now made about the learned counsel having raised such a convention before that Bench. Regarding our jurisdiction to hear this matter a further submission that was raised by the learned counsel was that the Bench constituted in pursuance of the order dated 13-2-86 should in any event have consisted of Shri M..

Santhanam and D.C. Mandal, Members also. But when it was pointed out her that this submission would run counter to the very provisions in Section 129C of the Customs Act she withdrew her submission in this regard. In the circumstances we overruled the submissions of Smt.

Wadhawa about our jurisdiction to hear the matter. Thereafter both sides were heard on the merits of the. issue.

5. The provisions that are relevant to the matter before -us are Sections 110 and 124 of the Customs Act and Sections 66 & 79 of the Gold (Control) Act For purpose of convenience they are extracted below: (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 of freer 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) Whether any goods are seized under Sub-section (1) and no notice in respect thereof is given under Cl.(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.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody, any documents are seized under Sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

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

(1) If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being, or is attempted to be, contravened, then he may seize - (a) such gold alongwith the package, covering or receptacle, if any (and the contents thereof), in which the gold is found; (b) any other goods in which any quantity of such gold has been mixed.

(a) any document or other thing which, in his opinion, will be useful for, or relevant to, any in-quiry or proceeding for the contravention of any provision of this Act or any rule or order made thereunder; (b) any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of any gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened.

(3) Any document or other thing seized under Sub-section (2) shall not be retained by the Gold Control Officer for a period exceeding six months from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Administrator for such retention is obtained: Provided that

the Administrator shall not authorize the retention of the document or other thing for a period exceeding thirty days after all proceedings, for which the document or other thing is useful or relevant, are completed.

(4) The person from whose custody any document or other thing is seized under Sub-section (2) may make copies thereof or take extracts therefrom in the presence of the Gold Control Officer or any other person empowered by him in this behalf, at such place and at such time as the Gold Control Officer may appoint in this behalf.

(5) If a person legally entitled to the document or other thing seized under Sub-section (2) objects for any reason to the approval being given by the Administrator under Sub-section (3), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the document or other thing.

(6) On receipt of the application under Sub-section (5), the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it may think fit.

Section 79 : Giving of an opportunity to the owner of gold, etc. - No order of adjudication or confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing - (i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and if he so desires, of being heard in the matter: Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral: Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

Explanation - Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made." 6. The seizure of the gold was on 29-5-69 under the provisions of the Customs Act. Notice was issued on 31-1-1970 (i.e.) subsequent to the expiry of 6 months from the date of seizure. Extension of time for issue of the notice beyond the period of 6 months had been granted by the Collector ex-parte without hearing the appellant. Therefore, as laid down by the Supreme Court in Assistant Collector of Customs v. Charan Das Malhotra AIR 1972 SC 689 notice must be held to have been issued beyond the time prescribed under Section 110 of the Customs Act and, therefore, under Section 110(2) the seized articles were liable to be returned to the person from whom the seizure had been effected. In the present case it appears that time had not been extended under Section 79 of the Gold (Control) Act. It is in these circumstances that it has to be determined whether the proceedings for confiscation in pursuance of the show cause notice issued under the Customs Act or the Gold (Control) Act were valid and whether any valid order for confiscation could be passed in such proceedings in spite of the fact that the seized goods were liable to be returned in view of the failure to give the statutory notice within the time prescribed there for. Both sides have relied upon a series of decisions as supporting their respective contentions. We shall therefore first set out these decisions and the observations therein and, thereafter, apply the principles laid down therein to arrive at our conclusion on the question referred to us.

7. The first decision to be taken note of is that of the Supreme Court in Assistant Collector of Customs v. Charan Das Malhotra AIR 1972 SC 689 cited supra. The following observations in paragraph 5 are relevant.

"Section 12* provides 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. The section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice." 8. The Madras High Court in its judgment delivered on 8-10-

73, in *Collector of Customs & Central Excise v. Amruthalakshmi* (AIR 1975 Madras *3), observed in paragraph 5 "we may at once state that we do not find any substance in the contention that if the notice under Section 110 is not in accordance with law, the authority under Section 12* will have no jurisdiction to proceed on with the confiscation proceedings or with the imposition of penalty." In paragraph 9, dealing with the same contention with reference to an earlier decision of Allahabad High Court, the Court observed "All that the passage states is that when once time for detention expires, the officer has to return the goods and he will not be permitted to withhold it on the ground that he is contemplating taking action under Section 12* of the Act. It does not say that once there is no proper notice under Section 110 action cannot be taken under Section 124." At the end of the same paragraph the Court observed "in the result we find ourselves unable to agree with the conclusion reached by the learned single Judge that notice under Section 110(2) and notice under Section 12* of the Act should be given within 6 months from the date of seizure of the goods; nor are we able to accept the view of 'the learned judge that a vested right is created in favour of the owner of the goods when a show cause notice under Section 12* is not given within 6 months as provided for under Section 110(2)." Finally in para 11 the Court observed "we are of the view that Section 110 can only be restricted to the seizure and detention of the goods for the period specified and has nothing to do with the other powers conferred on the authority under Section 124 or other provisions of the Act." 9

The Punjab & Haryana High Court dealt with this question in *Munilal v. Collector of Central Excise, Chandigarh* (AIR 1975 Punjab & Haryana 130). After referring to the decision of the Supreme Court cited supra and after observing in paragraph 8 that seizure of goods and confiscation of the same are distinct and different matters, the High Court observed in paragraph 9 as follows: "Therefore if my reading of the provisions contained in Section 124 and 110 of the Act is correct, there appears to be no bar for giving the show cause notice as contemplated by clause (a) of Section 124, even after the return of the seized goods because of failure to issue such notice within six months or the extended period thereafter as prescribed in Sub-section (2) and proviso thereto, of Section 110. When the provisions contained in the proviso to Sub-section (1) of Section 110, clause (a) of Section 124, and Sub-section (2) of Section 126 of the Act are looked at, it cannot

be gain-said that adjudication of confiscation of goods can be recorded even without seizure of the goods. Similarly, personal penalty can be imposed even when the goods have not been seized.

Such a situation is contemplated by clause (b) of Section 112 of the Act." 10. A Division Bench of the Bombay High Court dealt with this issue in *Mohan Lal Devdan Bhai v. H.P. Mondkar* (AIR 1977 Bombay 320), Dealing with the contention that seizure and, following the seizure, actual or Constructive possession was a condition precedent for an order for confiscation, the Court observed in Paragraph 7 : "The consequences of non-initiation of proceedings within the prescribed time are set out in the section and they are that the goods shall be returned to the person from whose possession they were seized. All the provisions of Chapter XIII are steps to facilitate investigation machinery and failure to issue a show cause notice under Cl.(a) of Section 124 within the prescribed time will only result in an obligation on the part of the Customs Authorities to return the goods to the person from whose possession they were seized. There is nothing in the language of Section 110 to indicate that a fetter or limitation is imposed upon the power of the competent Authority to initiate proceedings under Section 124. On the other hand, Section 124 is contained in Chapter XIV which contains substantive provisions relating to confiscation of goods etc. and imposition of penalty. Under Section 124 issue of a show cause notice prior to passing an order of confiscation or imposition of personal penalty is mandatory, but the language of Section 124 is clear and precise and no restriction or limitation or even a fetter is imposed as regards the time when proceedings may be initiated by issue of a show cause notice. Section 124 prescribes the conditions precedent which are to be fulfilled by the Authority before an order of confiscation of goods or an order imposing any penalty can be passed against any person. These conditions precedent are laid down in Clauses (a), (b) and (c) of Section 124 and they are: The owner of the goods or such person who is liable for penalty is to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; secondly, such owner or person is to be 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 thirdly, such owner or

person is to be given a reasonable opportunity of being heard in the matter. None of the three conditions precedent even suggests that there is a limitation on the exercise of the power either as regards the time or existence of seizure. On a plain reading of Section 124 it will be open even to the Competent Officer to pass an order of confiscation of goods or imposing any penalty without seizing any goods or after returning the goods under the proviso to Sub-section (2) of Section 110 for failure to initiate proceedings within the prescribed time. An investigation machinery cannot be equated with a limitation upon a substantive power contained in Section 124; more so, when the only consequence that follows for failure to give notice within the prescribed time is laid down in Section 110(2), namely return of goods to the person from whose possession they were seized. Even if the provisions of Sections 110 and 124 are to be harmoniously read, it will not be possible for us to imply such a fetter, restriction or limitation on the exercise of the powers conferred by Section 124." 11. A single Judge of the Delhi High Court in *Sardar Kulwant Singh v. Collector of Central Excise* (1981 ELT 3 Delhi) observed that notice under Section 124 of the Customs Act cannot be challenged on the ground that the same has not been issued within a period of 6 months of the seizure.

12. A Division Bench of the Delhi High Court in *Hemant Bahadur Lama v. Union of India* (1982 ELT 872 Delhi) observed as follows: "The Law is thus clear. The two sections i.e. Sections 110 and 124 are independent. There is nothing in language of Section 110 of the Act to indicate that a fetter or limitation is imposed upon power of the competent authority to initiate proceedings under Section 124 of the said Act. A notice issued after the period of six months does not invalidate the proceedings initiated on such notice even though it was issued on an extension of time illegally made ex-parte. So the failure to give notice under Section 110 of the Act cannot in any way affect the power to proceed with proceedings for confiscation. The argument, therefore, that as notice was not issued within six months from the date of seizure the petitioner is entitled to the return of the car is without any merits." 13. These above decisions, as also certain other decisions holding a contrary view (as would be mentioned in the succeeding paragraphs of this order), were recently considered by the Karnataka High Court in *Jevvaraj v. Collector of Customs* 1984 (3) ECC 71. Dealing with the contention that when the

goods are liable to be returned under Section 110(2) of the Customs Act on failure to issue notice under, that section within 6 months from the date of seizure, the goods become free of any liability for subsequent confiscation also, the High Court observed "with great respect to his Lordship these principles do not form the provisions of the Act and cannot also be up-held on any legal or juristic principles." Observing so, it is further stated that the view of the High Court of Madras, Punjab & Haryana, Bombay were being followed and not the contrary view.

14. Two other decisions where also this matter has been dealt with. are that of the Calcutta High Court in the case of All India General Transport Corporation v. Collector of Central Excise (1975 Vol. 79 Calcutta Weekly notes 663) and the Gujarat High Court in the case of J.K. Bardolia Mills v. M.L. Khunger (1975 (66) Gujarat Law Reporter 119). The substance of these decisions have been extracted in the order of Mr. Mandal. The full reports are not available for our perusal. We note from the order of Shri Mandal that these two judgments had also held that period mentioned in Section 110(2) was relevant only for the purpose of the seizure and the liability for return of the seized articles on failure to issue notice under that section within the time prescribed and not with reference to the validity of the notice with reference to other provisions of 15. As against the above decisions which had held that proceedings for confiscation would not be invalid for the reason that notice in that regard had been issued beyond the period mentioned in Section 110, there are certain other decisions of High Courts and one decision of this Tribunal which had held to the contrary. The Gujarat High Court in the case of A.M. Soni v. Union of India (AIR 1972 Gujarat 126) held that on failure to serve a notice within the period prescribed under Section 110 a vested Civil right arose for return of the seized goods; The question whether the proceedings for confiscation could continue even thereafter was not specifically considered in the said decision. Dhiraj Pal Amrit Lal Mehta v. Union of India (1982 ELT 273 Bombay) held that the power of confiscation cannot remain available for all time to come in respect of goods seized under Section 110 of the Act and therefore notice issued after the expiry of 6 months from the date of seizure was illegal and without jurisdiction.

17. The Calcutta High Court in the case of Kanti Lal v. Collector of Customs (1982 ELT 902 Calcutta) held that for purpose of confiscation the physical existence of the goods is necessary and when the seized goods are returned to the owner the goods so returned lose the character of offending goods and as such these goods could not be confiscated. The Court further observed "it is true that Section 110 and 124 are two independent sections and the time limit as mentioned in Section 110(2) does not control the issue of the notice under Section 124. But still then, there is a connecting link between the notice of confiscation of the goods and the retention of the seized goods." The Court finally held that the continuation of the proceedings in that case was contrary to the requirements of the statute and the proceedings as contained on such initiation could not continue, they being void ab-initio and absolutely without jurisdiction.

18. Almost all these decisions were considered by a single Judge of the Delhi High Court in the case of Shanti Lal Mehta v. Union of India (1983 ELT 1715 Delhi). It was held that confiscation is offspring of seizure and if the detention of the goods become illegal after the expiry of the period of 6 months due to want of notice within that time the confiscation of such goods thereafter would be illegal, since the authorities could not take advantage of their own illegality in continuing to be in possession of the goods.

19. Two other decisions to which reference has been made in the order of Shri Mandal are that of the Calcutta High Court in Uma Rajeshwar Rao Patra v. Union of India (1977 (2) Calcutta Law Journal 266) and that of the Andhra Pradesh High Court in Collector of Customs v. T.N. Khamibati (1977 Criminal Law Journal 1331). The full reports in these two cases are not available to us but these judgments are also noted (in the order of Shri Mandal) as up-holding the view that on failure to issue notice within the period stipulated under Section 110 (2) of the Customs Act other proceedings for confiscation under Section 124 would not be legal or valid.

20. The decision of this Tribunal relied on by the appellant is Vishwanath Pandey v. Collector of Customs (1984 (16) ELT 404). The Tribunal in that decision took note of the Madras High Court decision in Amrutha-lakshmi case but chose to follow the decision of the Calcutta High Court in 1982 ELT 902 and the single

Member Bench decision of the Delhi High Court in 1983 ELT 1750. Following the said two decisions the Tribunal held that proceedings for confiscation could not be continued if notice had not been given within 6 months from the date of seizure.

21. It is with reference to the above cited decisions that we have to arrive at a conclusion on the issue before us. The contention of the learned counsel for the appellant is that the provisions of Section 110 and 124 have to be harmoniously construed so that neither provision may become redundant. According to her if the period of limitation mentioned in Section 110 is not applied with reference to proceedings under Section 124 then the very object of directing return of the seized goods under Section 110 would become meaningless since in spite of such return proceedings for confiscation would continue. She further contended that if after return of the goods under Section 110 an order for confiscation is to be allowed to be passed that would amount, according to her, to mis-appropriation of the property. According to her the interpretation suggested by her (by way of applying the period of limitation mentioned in Section 110 with reference to proceedings under Section 124 also) would advance the intention of the legislature and therefore it is such an interpretation that is to be up-held. On the other hand, the Departmental representative contended that proceedings under Section 110 are distinct from proceedings under Section 124 and hence the period of limitation mentioned in Section 110 cannot be read into Section 124. According to her the entitlement for return of the property on failure to issue notice within time would not take away the right of the Department to initiate or continue proceedings for confiscation.

22. Neither side has brought to our notice any other decision of the Supreme Court on this issue except that reported in AIR 1972 SC 689 cited supra. The relevant passage therefrom has been extracted earlier.

The Supreme Court has specifically held therein that Section 124 does not lay down any period within which the notice required thereunder has to be given and that the period laid down under Section 110 (2) affects the seizure of the goods only and not the validity of the notice.

Therefore, in effect the Supreme Court laid down that the period of limitation mentioned in Section 110 cannot be read into the provisions of Section 124 and the said period cannot govern the legality or validity of the proceedings under Section 124. It is on the basis of these observations of the Supreme Court that the Madras High Court in AIR 1975 Madras 43 and the Punjab and Haryana High Court in AIR 1975 Punjab & Haryana 130 have laid down that in spite of lack of notice within time specified in Section 110, proceedings for confiscation under Section 124 could be initiated, continued and completed. The Punjab & Haryana High Court had further observed that confiscation could be effected even without prior seizure of the goods. The Bombay High Court had also in AIR 1975 Bombay 320 held that an order for confiscation would be legal without prior seizure. On this question of harmonious interpretation urged by the learned counsel for the appellant before us, the Bombay High Court has gone into, that matter and has held that even if the provisions of Section 110 & 124 are to be harmoniously read it will not be possible to imply a fetter or restriction on the exercise of the powers conferred under Section 124.

23. As earlier noted, the Supreme Court had in the Charan Das Malhotra case specifically stated that Section 124 does not lay down any period within which notice required under the section has to be given and that the period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice. That would only mean that the Supreme Court has laid down that the mere fact that notice had been given subsequent to the expiry of the period of 6 months mentioned in Section 110 would, not, for that reason, invalidate proceedings under Section 124 resulting in, an order for confiscation of the seized goods. This decision of the Supreme Court has been taken into consideration and construed in the above manner by the Madras, Bombay and Punjab & Haryana High Courts in their decisions cited supra. The Bombay High Court as well as Punjab & Haryana High Court had further held that the fact that the seized property had been returned and was therefore no longer in the possession (actual or juridical) of the Department would not for that reason invalidate an order for confiscation. The Division Bench of the Delhi High Court has also held to the same effect in the Hemant Bahadur Lama case. The decision of the Bombay High Court in the Dhiraj Pal Amrit Lal Mehta case and the single Judge decision of the Delhi High Court in

the Shanti Lal Mehta case proceed on the basis that once the seized articles are liable to be returned for want of service of notice within 6 months as required under Section 110 of the Customs Act, the authorities lose jurisdiction thereafter to proceed further in the matter of confiscation, since they would not have possession of the article which would be a condition precedent for an order for confiscation. They further hold that after lapse of the 6 months period from the date of the seizure the authorities will have no jurisdiction even to issue a notice and, therefore, the proceedings following such a notice would be without jurisdiction. The observation to the Supreme Court extracted earlier appears to be against the second of the grounds above mentioned. Even in respect of first ground there are, as earlier noted, other decisions of the same High Courts (BOMBAY & DELHI) to the contrary and, in addition, there are the decision of the Madras, Gujarat and Punjab & Haryana High Courts to the contrary. In the circumstances it appears to us that the proper answer to the question referred to us would be that the proceedings under Section 110 and 124 of the Customs Act are independent of each other and not inter-dependent and similarly the proceedings under Section 66 and 79 of the Gold (Control) Act are independent and not inter-dependent.

24. Another reason which would also be relevant in arriving at the said conclusion in the present proceedings would be that the proceedings in the present case arose within the jurisdiction of Punjab & Haryana High Court and, therefore, if any reference is to be made by us on the question of law it would be to the Punjab and Haryana High Court. It is taking into consideration that aspect also that our answer to the question referred to us is as above mentioned.

25. The papers shall now be transferred to. the Bench which heard the appeal, for passing further appropriate orders as required under Section 129C(5) of the Customs Act and Section 81D of the Gold (Control) Act.

In view of the opinion of the Majority the confiscation of the gold and imposition of personal penalty are confirmed.