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Court : Karnataka

Decided On : Jul-26-1990

Reported in : 1993(46)LC508(Karnataka)

Judge : B.P. Singh and ;K. Jagannatha Shetty, JJ.

Acts : [Customs Act, 1962](#) -Section 110(2), 124 ; Gold (Control) Act, 1968- Section 79

Appeal No. : Writ Appeal Nos. 2011 and 2012 of 1984 connected with Writ Petition Nos. 17552 to 17554 of 1984

Appellant : Jeevaraj and anr.

Respondent : Collector of Customs and Central Excise and ors.

Advocate for Pet/Ap. : Mr. Jeshtamal

Judgement :

ORDER

1. W.A. Nos. 2011 and 2012 of 1984 are directed against the order of the learned single Judge of this Court partly allowing the writ petition filed by the appellants herein. The learned single Judge however did not grant the relief prayed for by the appellants that the order of confiscation be quashed.

2. It was contended before the learned single Judge that in view of the provisions of Section 110(2) of the [Customs Act, 1962](#), if the show cause notice contemplated by Section 124 was not given to the appellants within the period of six months from the date of the seizure of the goods, not only the goods should be returned to the appellants but the proceeding itself must come to an end. Emphasis was placed on proviso to Sub-section (2) of Section 110. The learned single Judge took the view that where a valid notice under Section 110 was not served upon the petitioner, it only amounted to this that the petitioners became entitled to the return of goods seized from their possession. Failure to serve a notice within the specified period or any illegality in the extension of the period under proviso to Sub-section (2) of Section 110 did not vitiate the proceeding that may be initiated by issuance of a show cause notice under Section 124 of the Act. The learned single Judge was of the view that Chapter XIII of the Act dealt with matters relating to search, seizure and arrest etc., of which Section 110 was a part. So far as Section 124 was concerned it found place in Chapter XIV of the Act which related to confiscation of the goods and conveyances, and imposition of penalties. Having regard to the scheme of the Act, he held that Section 124 was not controlled by Section 110 and vice versa, and that the invalidity of an order made under Section 110 did not in any way affect the validity of proceeding initiated and completed under Chapter XIV of the Act. The learned single Judge has noticed the divergence of judicial opinion on this aspect of the matter.

3. In the course of his argument Mr. Jeshtamal, Counsel for the appellants, relied upon two unreported decisions of this Court pronounced by two Division Benches. In W.P. 3391/70 decided on 7.3.1973 this Court, after finding that the petitioner was not given a notice before the Collector extended the period by his order dated 10.4.1970, held that the extended period cannot ensure to the benefit of the authorities. Such a notice was clearly barred by time. Having so held, Their Lordships quashed the impugned show cause notice, and further directed the respondent to release the textile goods and the car seized from petitioner's possession. It will thus appear from this judgment that the show cause notice itself was quashed, apart from directing the return of the goods seized from the petitioner.

4. In W.P. 6231/74 decided on 15th March, 1976, a Division Bench of this Court considered the effect of failure to give a notice within the period of six months from the date of seizure as contemplated by Section 110(2) of the Act as well as Section 79 of the Gold (Control) Act, 1968. Upon a reading of the provisions of the Act, Their Lordships observed that no order confiscating any goods seized under the Act shall be made unless a notice in writing informing the owner of the goods of the grounds on which it is proposed to confiscate the goods is given within six months of the seizure of the goods. If notice was served beyond the period of six months, it has to be held that the petitioner had not been given the show cause notice within the specified time and consequently he would be entitled to the return of the goods seized. Their Lordships allowed the writ petition on a finding that no valid notice was served upon the petitioner of that case within the period prescribed by law and consequently a writ of mandamus was issued to the respondent directing him to return the seized goods. We may only observe that in the writ petition with which Their Lordships were dealing, there was a prayer for issuance of a writ of mandamus to the respondent directing him to return the goods seized by him as also for issuance of a writ of certiorari quashing the show cause notice. While Their Lordships granted the first prayer, the prayer regarding quashing of the show cause notice was not granted.

5. Learned Counsel has also brought to our notice large number of decisions of various High Courts taking divergent views on this question. He contends that once it is held that the notice under Section 110 of the Act was not validly served upon the petitioner within the time prescribed by law, not only is the petitioner entitled to the return of the goods seized from his possession, but the entire proceeding with regard to the confiscation and imposition of penalty must come to an end because once the goods are returned to the petitioner, there is no limitation placed upon the right of the petitioner to deal with such goods in such manner as he likes. He submitted that the seized goods once returned may not be available for confiscation, and he further contended that the continued seizure of the goods is a condition precedent for passing of an order of confiscation. No order of confiscation of goods can be passed unless the goods seized are in the custody of the department. He further submitted that Section 110(2) must be read as a limitation upon the power of the authorities to initiate a proceeding under the Act

for the confiscation of the goods seized from the possession of the petitioner. According to him, a show cause notice under Section 124 must be issued within six months from the date of seizure of the goods or the extended period contemplated by the section. If there is failure on the part of the Department to comply with this requirement, the proceeding for confiscation of the goods and the imposition of penalty must come to an end as if it was barred by lime. As observed earlier, this view is also supported by decisions of some of the High Courts. But the other view, namely, that failure to comply with Section 110(2) of the Act only entitles the petitioner to claim return of the goods and does not bring to an end the proceeding which has yet to be adjudicated in accordance with the provisions of Chapter XIV, has also found favour with some other High Courts.

6. Having regard to all these facts and circumstances, we find that the question involved is of great importance, and a question on which there is considerable divergence of judicial opinion. We, therefore, refer the question formulated below for the option of the Full Bench:

(1) Whether having regard to the provisions of Sections 110 and 124 of the [Customs Act, 1962](#), failure to comply with the provisions of Section 110(2) of the Act would act as a bar to the initiation of proceeding for confiscation and imposition of penalty in accordance with the provisions of Chapter XIV of the Act, by issuance of a show cause notice under Section 124 thereof; or whether such non-compliance would only result in entitling the person from whom goods are seized, to the return of those goods without in any way affecting the proceeding for confiscation and imposition of penalty that may be initiated by issuance of a show cause notice under Section 124 of the Act?

7. In W.P. Nos. 17552 to 17554/84 a similar submission has been urged having regard to the provisions of Section 79 of the Gold (Control) Act, 1968, the question which requires consideration by the Full Bench is:

Whether having regard to the provisions of Section 79 of the Gold (Control) Act, 1968, the failure to issue a valid notice under Section 79 of the Act within the period prescribed by law would only entitle the person from whose custody the goods are seized, to the return of those goods, or whether, having regard to the

proviso to Section 79, no proceeding for confiscation and imposition of penalty can be taken, and no show cause notice for the confiscation of the goods and imposition of penalty can thereafter be issued.

8. Let these matters be placed before the Hon'ble Chief Justice for appropriate orders.

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