Collector of Customs and anr. Vs. Ranjit Exports Pvt. Ltd.

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Court : Chennai

Decided On : Sep-27-1989

Reported in : 1994(45)ECC27

Judge : S. Mohan, O.C.J. and ; S. Ramalingam, J.

Appeal No. : Writ Petition No. 1390 of 1985

Appellant : Collector of Customs and anr.

Respondent : Ranjit Exports Pvt. Ltd.

Disposition : Appeal allowed

Judgement :

S. Mohan, O.C.J.

1. The proposition of law as laid down by the learned single Judge cannot be accepted. The learned Judge has observed as follows:

Under Section 110(1) of the Act, a seizure could take place without issue of any order of seizure. It is only in respect of those goods where it is not practicable to seize any such goods, the owner of the goods is to be served with an order by the proper officer not to remove, part with or otherwise deal with the goods by the owner. Therefore, there may be instances wherein the proper officer would come into custody of goods in the normal course of export and import transactions like violation of proper duty payable thereon, etc. In the course of inspection, if he found that there had been any contravention of the provisions of the Customs Act, the proper officer would physically retain the custody of the goods and proceed with confiscation proceedings. The language of the provisions of the Act are to the effect that in such circumstances, he has to issue seizure order and only from that date, the seizure contemplated under Section 110(1) of the Act would come into operation. Even without serving an order of seizure, the proper officer could effect seizure of goods. Learned Counsel for the respondents had not placed before Court any provision which compels the proper officer to serve an order of seizure and only thereafter he could get custody of the goods. Evidently, such a procedure would hamper effective functioning of officials entrusted with duties to enforce the provisions of Customs Act. If he comes across in the course of his duties any goods which are prohibited from being imported straightaway he could take physical custody of the goods and from that moment onwards, in law, he had effected seizure of the goods. Looked at from this point of view and there being no specific provision in the Act having been placed before this Court to show that only after seizure is effected, there could be confiscation, it has to be held that without serving an order, seizure can be effected by taking physical custody of the goods in relation to which the proper officer has reason to believe that they are liable for confiscation.

On the above basis, the learned Judge proceeded to observe as follows:-

In the decision in Shantilal Mehta v. Union of India and Ors. 1983 ELT 1715 (SC) it was held that retention beyond the time limit under Section 110(2) is illegal and without jurisdiction. It was further held that since the right of retention of the seized goods is a vested civil right which goes to the owner of the goods on the expiry of six months, any detention beyond the time limit is illegal and any confiscation effected also becomes illegal and nullity.

Here is a case where nothing was done by the proper officer and the learned Judge himself has observed in paragraph 7 of his order as follows:-

In the instant case, as pointed out above, the moment the report from the laboratory was received and the authority had drawn the opinion that the goods are liable to be confiscated under Section 113 of the Act which had resulted in the belated show cause notice dated 26.3.1984 being issued, the further retention of the goods beyond 25.5.1984 could never be treated as detention of goods for payment of duty. Therefore, the period of six months under Section 110(2) of the Act will automatically get lapsed over the goods and hence the related issue of show cause notice dated 26.3.1984 being beyond the time fixed by the statute, the petitioner is entitled to release of the goods forthwith on production of a steno copy of this order.

If therefore nothing was done excepting that the authority had opined about the liability to confiscation without giving expressing to his opinion by means of a show cause notice, there is no question of reckoning the limitation. This is the contention that is urged by Mr. P. Narasimhan, Senior Central Government Standing Counsel which we find is entitled to acceptance. Accordingly, the writ appeal is allowed. No costs.

We make it clear that if the respondent had suffered any loss by reason of the goods being detained, that has to be agitated in separate proceedings.