# Harbans Lal vs Collector Or Central Excise And ... on 14 July, 1993

## Equivalent citations: AIR1993SC2487, 1994(1)ALT(CRI)9, 1993(44)ECC183, 1993ECR219(SC), 1993(67)ELT20(SC), JT1993(4)SC135, 1993(3)SCALE64, (1993)3SCC656, [1993]SUPP1SCR131, AIR 1993 SUPREME COURT 2487, 1993 (3) SCC 656, 1993 AIR SCW 3168, (1993) 4 JT 135 (SC), 1993 (4) JT 135, 1993 SCC(CRI) 983, (1993) 48 ECR 219, (1993) 67 ELT 20, (1993) 44 ECC 183, (1993) 4 CURCRIR 388, (1993) ALLCRIC 766, (1993) SC CR R 553

## Author: Madan Mohan Punchhi

## Bench: A.M. Ahmadi, Madan Mohan Punchhi

ORDER

Madan Mohan Punchhi, J.

1. This appeal is directed against the judgment and order of a learned Single Judge of the Punjab and Haryana High Court at Chandigarh, dated August 7, 1979, passed in Civil Writ Petition No.4206 of 1973, raising an important question of law, whether Sections 110 and 124 of the Customs Act, 1962 (hereinafter referred to as 'the Act') arc inter-se independent, distinct and exclusive or are they inter-woven, inter-connected and inter-playing, on the answer of which depends the survival or otherwise of proceedings for confiscation of goods and imposition of penalties, under Chapter XIV of the Act.

2. On March 4, 1970, Harbans Lal, the appellant herein, was arrested and a huge quantity of gold, currency notes and other articles were seized from his possession. The seizure was effected under Chapter XIII of the Act. Sub-section (2) of Section 110 occurring in that Chapter provides that where any goods are seized under Sub-section (1) of Section 110 and if 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 period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding another six months. On August 27, 1970, prior to the expiry of six months from the date of seizure, the Collector, Central Excise and Customs, Chandigarh, on his own, by means of an ex parte order, extended the seizure period further by six months, i.e., up to 19.3.71. Thereafter, on March 4, 1971, a show cause notice was issued to the appellant in accordance with the provisions of Section 124 of the Act informing him the grounds on which it was proposed to confiscate the goods

and to impose on him a penalty, as well as affording him an opportunity for making representation in writing within a period of ten days against the grounds of confiscation or imposition of penalty mentioned in the notice. Opportunity was also given to the appellant in the said notice for his personal appearance or through a legal representative on the date to be fixed, on which dale the case would be decided on the basis of the evidence on record.

3. The appellant, in response, challenged the jurisdiction of the Collector, inter alia, claiming that since the extension of the seizure period under Section 110 of the Act had been made ex-parte, without affording the appellant an opportunity of being heard against the the proposed extension, the entire proceedings were vitiated and hence issuance of notice under Section 124 was void ab initio. The Collector, however, deferred the objection raised by the petitioner viewing that it would be dealt with during the course of proceedings under Section 124 of the Act. Thus at that stage itself the appellant approached the High Court in a petition under Article 226 of the Constitution praying for quashing the extension order and squally the show cause notice, and in the alternative, for a direction to the Collector to decide the preliminary objection as to the vitiation first and not to proceed with the case under Section 124 of the Act, its initiation being void ab initio.

4. The legal stance adopted by the appellant was refuted by the Customs Authorities. The tactual position was, however, not denied. Additionally it was pleaded that proceedings under Section 78 of the Gold (Control) Act, 1968 has also been initiated against the appellant within the period of limitation prescribed under Section 79 of the said Act. The seizure of goods' thenceforth were suggested to be under the Gold (Control) Act, and thus it was pleaded that Section 110(2) of the Customs Act, 1962 was no longer in play for the purpose of holding the goods by the Customs authorities. On the legal question, it was asserted that the provisions of Sections 110 and 124 were mutually exclusive; the former only compelling in the return of goods to the person from whose possession they were taken, on the expiry of the original or extended period. So far as the goods in question were concerned, it was pleaded that those would have been returned to the appellant but for the proceeding under the Gold (Control) Act, 1968 initiated against the appellant.

5. On the question above posed, the High Court when deciding in 1979 found a difference of opinion raging in various High Courts in the country. The learned Single Judge, considering himself bound by the view taken by his Court, holding that proceedings under Section 124 were independent of the provisions of Section 110 of the Act, and even though a person from whom the goods had been seized may become entitled to receive the goods back in view of the failure of service of notice within the period stipulated under Section 110(2) of the Act, still proceedings for confiscation under Section 124 could proceed. For the said reason, the High Court dismissed the writ petition leading the appellant to appeal to this Court.

6. It would, at this juncture, be apposite to take note of the two provisions, quoted hereafter:-

> 110. Seizure of goods, documents and things: (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 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 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 proceedings under this Act.

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

...

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 penatly;

(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.

7. As said before Section 110 is in Chapter XIII covering the subject of search, seizure and arrest. The Section operates during the stage of investigation. Section 124 hinted earlier, is in Chapter XIV which covers the topic confiscation of goods and imposition of penalties. The subject of investigation and that of confiscations and imposition of penalties are ex facie exclusive of each other, the goal of each being different. A Constitution Bench of this Court in I.J. Rao, Asstt. Collector of Customs and Ors. v. Bibhuti Bhushan Bagh and Anr. , while interpreting Section 110(2) proviso of the Act

has held that when wanting to extend period beyond six months in respect of seizure of goods, the Collector must serve notice on and afford hearing to the owner of the goods before deciding grant of extension, as his right to restoration of his goods after six months is defeated by the order of extension. It has also viewed that where rights of a person are adversely and prejudicially affected by an order made by an authority in a proceeding, such person is entitled to a predecisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature. Earlier in point of time in The Asstt. Collector of Customs and Ors. v. Charan Das Malhotra , this Court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2) and that, therefore, extension of the period has become necessary. The Court also emphasised that the Collector cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the Customs authorities applying for extension to show that such extension was necessary. It was also pointed out that on the expiry of the period of six months, from the date of seizure, the owner of the goods would be entitled as of right to restoration of the seized goods, and when right could not be defeated without notice to him that an extension was proposed. It is found that the point was considered again Lokenath Tolaram etc. v. B.N. Rangwani and Ors. , but this case has been concluded on different considerations. Unquestionably thus is the settled position of law that while extending time under Section 110(2), the owner of the seized goods is entitled to notice, because the seized goods on the expiry of period of six months are required to be returned to him, and if that period was to be extended for another period of six months he had the right to be heard. The High Court in the decision under appeal has thus rightly observed that it was not disputed before it that the exparte order extending the time by another six months as postulated in Sections 110(2) and 124 of the Act, was vitiated.

8. Then comes the question as to what is the fallout of the order extending time under Sub-section(2) of Section 110 of the Act being vitiated. Learned Counsel for the appellant would have us hold that in face of that vitiation, proceedings under Section 124 get lapsed for they could not be initiated without the aid of Section 110. This argument, however, militates against the ratio of Charandas Malhotra's case supra and cannot be accepted. In the second half of paragraph 5 of the report of the case this Court observed :-

Section 124 provides that 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 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.

(Emphasis supplied).

In clear terms, it has thus been held that the period angle causing affectation under Section 110(2), would only pertain to the seizure of goods. The validity of notice under Section 124, for which no period has been laid within which it is required to be given is not affected. The seizure may have, after the expiry of six months or after the expiry of extended period of six months entitled the owner or the person concerned the possession of the seized goods. This obviously is so because the matter at that stage is under investigation. On launching proceedings under Chapter XIV, Section 124 enjoins issuance of a notice for which no period has been fixed within which notice may be given. The difference is obvious because this goes as a step towards trial. The ratio of this Court afore-quoted in Charandas Malhotra's case, thus settles the question afore-posed and the answer is that these two Sections 110 and 124 are independent, distinct and exclusive of each other, resulting in the survival of the proceedings under Section 124, even though the seized goods might have to be returned, or stand returned, in terms of Section 110 of the Act, after the expiry of the permissible period of seizure.

9. The Bombay High Court in M/s. Mohanlal Devdanbhai Choksey and Ors. v. M.P. Mondkar and Ors. , as is evident, correctly appreciated and followed Charandas Malhotra's case supra. In so doing, it has observed:

It should not be overlooked that the object underlying Section 110 is not initiation of proceedings for confiscation of goods or for imposition of personal penalty, but is to indicate what will happen if such initiation has not taken place within the time prescribed by the section itself. 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 Clause (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 fatter 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.

We observe that this is the correct view of the matter.

10. In Jeevaraj and Ors. v. Collector of Customs and Central Excise, Bangalore, and Ors. Karnataka, a learned Single Judge of the Karnataka High Court rightly held that the invalidity of an order made under Section 110 does not in any way affect the validity of the proceedings for confiscation and imposition of penalty initiated and completed under Chapter XIV of the Act. On the same reasoning the Punjab and Haryana High Court's view in Muni Lal v. Collector, Central Excise, Chandigarh , later affirmed by the Letter Patent Bench of that Court in appeal, is the correct view of the matter and the learned Single Bench rightly felt bound to follow the same in the judgment under appeal. The discordant note struck by the Andhra Pradesh High Court in The Appellate Collector of Customs and Central Excise, Madras and Anr. v. T.N. Khamibati, Crl. Law Journal (1977) 83 (Part 2) 1331, on an apparent misappreciation'of Charandas Malhtra's case supra, though the High Court had the advantage to deal with it, cannot be upheld. Its view that Section 110 and 124 are not distinct and different from each other is not correct. The views of the other High Courts would now stand straightened by the above answer, without burdening this judgment with further case law.

11. Having answered the question as above, the order of the High Court under appeal commends to us and deserves in the circumstances to be maintained. Accordingly, while doing so, we dismiss the appeal but make no order as to costs.