Supreme Court of India
J.K. Bardolia Mills vs M.L. Khunger,Dy.Collector on 18 July, 1994
Equivalent citations: 1994 SCC (5) 332, JT 1994 (4) 515
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
J.K. BARDOLIA MILLS

Vs.

RESPONDENT:
M.L. KHUNGER,DY.COLLECTOR

DATE OF JUDGMENT18/07/1994

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
MOHAN, S. (J)

CITATION:
1994 SCC (5) 332 JT 1994 (4) 515
1994 SCALE (3)341

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The question for our consideration in this appeal is whether the provisions of Section 123 of the Customs Act, 1962 (the Act) would be attracted in a case where the retention of the goods has become illegal under Section 110(2) of the Act because no notice as required under the said provision was served within the statutory period.

2. The factory premises of the appellant-firm were raided by the Custom authorities on 26-5-1969 and 28 packages of synthetic fabrics of foreign origin were seized. The seizure was made under Section 110 of the Act. By the order dated 27-11-1969 the Collector Customs extended the period for the issue of show-cause notice prescribed under Section 124 of the Act by two months from the date of the order. Finally, the show-cause notice in terms of Section 124(1)(a) of the Act was received by the appellant-firm on 26-12-1969. The Assistant Collector, Bombay by the order dated 24-2-1971 under Section 112(b) of the Act, confiscated the goods in dispute and also imposed a penalty of Rs 50,000 on the appellant. The appeal filed against the order of the Assistant Collector was dismissed

by the Appellate Collector. The appellant challenged the orders of the Assistant Collector and the Appellate Collector by way of a writ petition under Articles 226/227 of the Constitution of India before the High Court of Gujarat at Ahmedabad. The High Court dismissed the writ petition with cost. This appeal, by way of special leave, is against the judgment of the High Court.

3. It was contended before the High Court that the goods in dispute were seized by the Custom authorities on 29-5- 1969 and the notice as contemplated by Section 124(1)(a) read with Section 110 of the Act was given on 19-12-1969. The said notice, having been served on the appellant after the statutory period of six months, was invalid and illegal. It was further contended that the notice being invalid, the appellant was entitled to the return of the seized goods under Section 110(2) of the Act and further the Custom authorities were debarred from holding the adjudication proceedings in respect of the goods in dispute. In other words, it was contended that once the notice under Section 110(2) of the Act is invalid, no proceedings for confiscation of the seized goods can thereafter continue. The High Court, relying upon the judgment of this Court in Assistant Collector of Customs v. Charan Das Malhotra1 , held the show-cause notice under Section 110(2) read with Section 124(1)(a) of the Act to be invalid but even then found the adjudication proceedings and the confiscation order to be valid on the following reasoning:

> "The consequence is that the order passed by the Collector of Customs and Central Excise dated 27-11-1969 extending the period of six months provided in Section 110 by two months provided in Section 110 by two months from 26- 11-1969 is bad and illegal in view of the provisions of Section 110(2) of the Act. But the question then arises is whether the petitioner is entitled to return of the goods seized, once the order of confiscation is passed under Section 111 of the Act. So far as Section 110 is concerned it deals with the seizure of the goods and the return thereof.

In other words if the said provisions are not satisfied the goods seized have to be returned. Section 110 of the Act deals with the seizure of the goods. Section 124 of the Act deals with the confiscation and imposition of the penalty. The provisions relating to the seizure of the goods and those relating to the confiscation of the goods or imposition of penalty stand on different footing. Section 124 of the Act 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. In the present case after the proceedings of seizure , proceedings for confiscation and imposition of penalty were proceeded with and the proceedings ended in the order of confiscation and imposition of penalty vide order Ex. 'D'. As the goods have already been ordered to be confiscated the question of return of goods after the period of six months as mentioned in Section 110 of the Act cannot survive."

The High Court further noticed the provisions of Sections 110, 111, 112 and 124 of the Act and observed as under: 1 (1971) 1 SCC 697 : 1971 SCC (Cri) 321 : AIR 1972 SC 689 "These words are of widest import and they cannot be given a restricted meaning as is sought to be given by the learned advocate for the petitioner. There is nothing in these provisions to indicate that the goods in respect of which an order of confiscation or penalty can be passed under Sections III and 112 of the Act must be goods seized under the provisions of Section 110 of the Act. The power to seize the goods under

Section 110 is distinct and separate from the power of confiscation and imposition of penalty as provided in Sections 111 and 112 of the Act. The later provisions are not absolutely dependent on the provisions of Section 110 of the Act."

4. Charan Das Malhotra case' was followed by this Court in Chaganlal Gainmull v. Collector of Central Excise2. The view taken by the High Court is, therefore, unexceptionable and we uphold the same.

5. Mr Hardev Singh, learned counsel for the appellant, however, contended that the notice under Section 110(2) being invalid, the provisions of Section 123 of the Act would not be attracted in the present case. According to him but for the presumption under Section 123 of the Act there is no material on the record to show that the goods in dispute are smuggled goods and once it is held that Section 123 of the Act is not applicable to the facts of the present case, the order confiscating the goods and imposing penalty are liable to be set aside. We do not agree with the contention of the learned counsel. To appreciate the argument, we may refer to the relevant provisions of Sections 110 and 123 of the Act which are as under:

> "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.

123. Burden of proof in certain cases.- (1) Where any goods to which this section applies are seized under this Act in the reasonable 2 1990 Supp SCC 527 : 1991 SCC (Cri) 149 belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

> (a) in a case where such seizure is made from the possession of a any person,-
>
> (i) on the person from whose possession the goods were seized; and
>
> (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also, on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, diamonds, manufacturers of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

6. The conditions to be satisfied for application of the provisions of Section 123 of the Act are (a) the goods must be one to which Section 123 applies; (b) the goods are seized under the Act and (c) the goods must be seized in the reasonable belief that they are smuggled.

7. It was not disputed before the Assistant Collector that Section 123 applied to the goods in dispute. Reasonableness of belief has to be judged in the light of the facts and circumstances of each case. It is not the case of the appellant that in the facts of the present case reasonable belief could not be entertained that the goods were smuggled. The only contention raised by the learned counsel for the appellant is that in this case the seizure of the goods became illegal due to non-compliance of the provisions of Section 110(2) of the Act and, as such, one of the conditions for the applicability of Section 123 is not satisfied. There is no force in the contention. The goods were seized under Section 110(1) of the Act by the proper officer on the ground that he had reason to believe that the goods in dispute were liable to be confiscated under the Act. The seizure when made was in accordance with law and no fault could be found with the same. When the goods are seized under Section 110(1) of the Act that amounts to seizure of the goods under the Act and one of the conditions for invoking the provisions of Section 123 of the Act are satisfied by the mere factum of seizure. The effect of non-compliance of the provisions of Section 110(2) would only be that the seized goods are returned to the person from whose possession they were seized. It would not render the initial seizure of the goods illegal. We, therefore, hold that the seizure of the goods under Section 110(1) by itself is sufficient to comply with the requisite condition under Section 123 of the Act. What happens to the goods thereafter is of no consequence.

8. We, therefore, dismiss the appeal with costs. We quantify the cost as Rs 10,000. As a consequence, 1A No. 1 of 1993 is also dismissed.