

(2002) 04 CAL CK 0036

Calcutta High Court

Case No: A.P.O.T. No. 78 of 2002 and W.P. No. 1304 of 2001

E.S.I. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: April 24, 2002

Acts Referred:

- Customs Act, 1962 - Section 110(1), 110(2), 124

Citation: (2003) 156 ELT 344

Hon'ble Judges: Altamas Kabir, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Ajit Kumar Panja, S.P. Sarkar, Samit Talukdar and V. Bhatia, for the Appellant; Mani Bhusan Sarkar, S.K. Sengupta, Prabuddha Laha and A.K. Dey, for the Respondent

Final Decision: Allowed

Judgement

Altamas Kabir, J.

This appeal is directed against the judgment dated 28th November, 2001, passed by the learned Single Judge in W.P. No. 1304 of 2001, dismissing the writ petition filed by the appellants praying for a writ in the nature of Mandamus upon the respondents to release all the imported goods of the appellants seized by the respondents on 9th November, 2000, u/s 110(1) of the Customs Act, 1962, hereinafter referred to as the "said Act".

2. As will appear from the case made out by the appellants, a certain quantity of raw silk yarn was imported by the appellants which reached Calcutta Port at Falta on 24th June, 2000, and 10th August, 2000 and possession of the said goods were taken at Calcutta on 5th July, 2000 and 20th August, 2000, respectively. According to the appellants the entire raw materials covered by the said two consignments were sent by them to the respondent No. 6, Eastern Enterprises, Ltd., who were engaged in the business of weaving imported raw silk yarn into fabric, on 11th October, 2000

and 1st November, 2000. According to the appellants the said respondent forwarded the said goods to their Varanasi office for manufacturing fabric in Varanasi.

3. On 9th November, 2000, the said goods of the appellants, while in the custody of the respondent No. 6 at Varanasi, were detained and seized by the Inspector, Customs, Varanasi Division, u/s 110(1) of the said Act. It is the case of the appellants that 297 bales belonging to the appellants and sent to the respondent No. 6 were part of the 360 bales covered by the detention and seizure order dated 9th November, 2000. It appears further that on the basis of representations made by the appellants supported by certain documents as to the genuineness of the import of the said goods, the Superintendent of Customs, Varanasi Division, by a letter dated 11th January, 2001, released 46 bales out of the total quantity of 297 bales of raw silk yarn and continued to detain the balance consignment of 251 bales. Inasmuch as, despite repeated demands and representations made on behalf of the appellants, the respondent authorities did not release the balance goods, the appellants filed the aforesaid writ application on 15th July, 2001, challenging the said detention and seizure of the appellants' goods and for a direction upon the said respondents to release the balance goods belonging to the appellants.

4. The main ground of challenge to the said detention and seizure was that having seized the said goods on 9th November, 2000, the Customs authorities were under an obligation to issue a show cause notice to the appellants u/s 124 of the Customs Act, 1962, within a period of six months from the date of the seizure, in order to give the appellants a reasonable opportunity of explaining as to why the seized goods should not be confiscated. Since according to the appellants such notice to show cause was issued on 30th July, 2001, the same was beyond the statutory period of six months and the detention not having been extended on sufficient grounds beyond such period, the authorities were under an obligation under Sub-section (2) of Section 124 of the said Act to return the seized goods to the appellants.

5. On behalf of the respondents it was contended that the goods in question had merely been detained on 9th November, 2000, in keeping with the proviso to Section 110(1) of the said Act and that the goods were actually seized on 1st March, 2001, as per the seizure list and the show cause notice having been issued on 30th July, 2001, the same was well within the statutory period of six months.

6. Accepting the contention of the respondents, the learned Single Judge was of the view that on 9th November, 2000, the Customs authorities had only detained the appellant's goods and that actual seizure was effected on 1st March, 2001, and that the notice to show cause issued on 30th July, 2001 was valid having been issued within the statutory period six months from the date of seizure. The learned Single Judge dismissed the appellant's writ petition on the aforesaid consideration, and, as indicated hereinbefore, this appeal has been filed against the said order of the learned Single Judge.

7. Appearing in support of the appeal, Mr. Ajit Kumar Panja submitted that the decision of the learned Single Judge was based on an erroneous finding that the detention of the goods on 9th November, 2000, did not amount to seizure within the meaning of Section 110(1) of the Customs Act, 1962, and that actual seizure of the goods took place on 1st March, 2001, Mr. Panja submitted that although the proviso to Sub-section (1) of Section 110 of the said Act provides that where it is not practicable to seize the goods, the owner of the said goods could be directed by an order not to remove, part with, or otherwise deal with the goods except with the previous permission of the concerned officer, in the instant case the dominion over the goods went out of the hands of the appellants as soon as on 22nd November, 2000, the rooms in which the detained and/or seized goods were kept were sealed by the Customs Officers (P), Varanasi Division. Mr. Panja submitted that the fact relating to the sealing of the rooms by the said Customs authorities would be evident from the Supurdnama executed by the person in whose custody, the said goods were kept and which has been made Annexure "X" collectively to the affidavit-in-reply affirmed on behalf of the appellants.

8. In support of his submission Mr. Panja firstly referred to a Bench decision of this court in Collector of Customs and Central Excise, West Bengal and Ors. v. Hindustan Motors Ltd. and Anr. 1979 (4) E.L.T. J 313, where the same question as to the distinction between seizure of goods and prohibitory order within the meaning of Section 110(1) of the Customs Act and the proviso thereto, fell for consideration. Mr. Panja submitted that, as in the instant case, in the said case also, the goods in question were sealed by the Customs authorities. In such context, the court observed that if the goods were sealed with the seal of the Assistant Collector of Customs, such an overt act of sealing the packed and re-packed drums amount to exercise of dominion over the goods. In other words, it is an act of seizure of the goods within the meaning of Section 110(1) of the Customs Act, 1962 and not a prohibitory order in terms of the proviso thereto.

9. Reference was also made to a Single Bench decision of the Kerala High Court in the case of [M. Mohammed Vs. Collector of Customs and C. Ex.](#), wherein it was held that the order of detention virtually amounts to seizure, the only difference being that physical possession is not taken by the person entitled to effect the seizure, but, all the same, the dealer is not in a position to remove or deal with the goods, as there is restraint in regard to the said goods.

10. Mr. Panja also referred to the decision of the Hon'ble Supreme Court in Chaganlal Gainmull v. Collector of Central Excise 1999 (109) E.L.T. 21 (S.C.), where in connection with a show cause notice for confiscation u/s 110(2) of the Customs Act the Hon'ble Supreme Court observed that if such show cause notice was not issued within six months, the only consequence would be that the person from whom the goods were seized would be entitled to their return.

11. Certain other decisions were also referred to by Mr. Panja wherein the same principle was explained.

12. Mr. Panja submitted that the learned Single Judge had wrongly relied on the Single Bench decision of this court in [Surendra Kumar Banthia Vs. Collector of Customs](#), , where one of the submissions advanced on behalf of the petitioner was that since no adjudication proceedings had been initiated within a period of six months from the date on which the goods had arrived the goods must be taken to have been seized within the meaning of Section 110 of the Customs Act, 1962, and no notice u/s 124 having been issued, the petitioner was entitled to release of the goods u/s 110(2) of the Act. The learned Judge negated such submission on the ground that since no seizure had been effected, the mere refusal to release the goods until final assessment could not be considered as seizure for the purposes of Section 110(2) of the said Act.

13. Mr. Panja submitted that the facts in Surendra Kumar Banthia's case were totally different from the facts of this case and the learned Single Judge in Banthia's case did not have occasion to consider the petitioner's loss of dominion over the goods in question.

14. Mr. Panja submitted that the order of the learned Single Judge was not capable of being sustained and was liable to be set aside and a writ in the nature of Mandamus should issue to the concerned respondent to release the goods of the appellants seized by the Inspector, Customs, Varanasi Division on 9th November, 2001, u/s 110(1) of the Customs Act, 1962.

15. Appearing for the respondents, Mr. Mani Bhusan Sarkar urged that the learned Single Judge had very correctly held that no seizure had, in fact, been effected on 9th November, 2000, and that the goods had actually been seized on 1st March, 2001, u/s 110(1) of the said Act, and the notice to show cause u/s 124 was issued well within the period of six months indicated in Section 110(2) thereof.

16. Mr. Sarkar submitted that the dominion over the detained goods never went out of the hands of the appellants as the same were kept with one Shri Hari Prasad Agarwal, who was a Director of M/s. Eastern Enterprises Ltd., a sister concern of the appellant-company. Mr. Sarkar submitted that the rooms in which the goods were detained belonged to M/s. Eastern Enterprises Ltd., and the locks for locking the said rooms were provided by the said company and the keys thereof remained with the company. Mr. Sarkar contended that the seals over the locks had been placed by the Customs authorities at the request of the company.

17. Mr. Sarkar urged that M/s. Eastern Enterprises Ltd. retained dominion over the detained goods which remained in its custody, possession and control till the same were seized on 1st March, 2001.

18. Mr. Sarkar submitted that in the Hindustan Motors" case (supra) relied upon by Mr. Panja, the goods in question had been unpacked and placed in drums which were sealed by the Customs authorities. In the instant case, the detained bales remained untouched and only the rooms in which they had been kept were sealed at the request of Shri Hari Prasad Agarwal, a Director of M/s. Eastern Enterprises Ltd.

19. Mr. Sarkar submitted that the question involved in this case had been considered and correctly interpreted in Surendra Kumar Banthia"s case and the learned Single Judge had after considering the said decision quite rightly held that the dominion of the detained goods remained with Shri Hari Prasad Agarwal from 9th November, 2000, till they were seized on 1st March, 2001 and that the show cause notice issued u/s 124 of the Customs Act, 1962 on 30th July, 2001, was within the period indicated in Section 110(2) of the said Act and the appellants were not, therefore, entitled to return of the seized goods.

20. Having considered the submissions made on behalf of the respective parties we are inclined to accept Mr. Panja"s submission that dominion over the goods initially detained on 9th November, 2000, went out of the hands of the appellant-company when on 22nd November, 2000, the rooms in which the goods had been kept were sealed by the Customs Officers, Varanasi Division. The facts of this case are squarely covered by the facts of the Hindustan Motors case (supra). Once the dominion over the goods passed out of the hands of the appellant-company it tantamounted to seizure for all practical purposes. It is one thing for the goods to be kept detained in a manner where the owner thereof has access to the same but is prevented by a prohibitory order from dealing with the same. The situation is radically altered when the owner of the goods no longer has access thereto and has no control over the same.

21. In Banthia"s case (supra), the learned Single Judge was considering a case where the customs authorities had refused to release certain goods, which had been imported, without a Bond backed by a Bank guarantee to the extent of 30% of the assessable value of the said goods. It is in such context that the learned Judge was called upon to consider whether the concerned party was entitled to release of the goods since no adjudication proceedings had been initiated within six months from the date of arrival of the goods. As was observed by the learned Judge, there was no element of seizure involved in the matter.

22. In the instant case when the rooms in which the goods in question had been kept were sealed by the Customs authorities on 22nd November, 2000, as will appear from the Supurdnama, the order of detention purportedly passed under the proviso to Section 110(1) of the Customs Act, 1962, on 9th November, 2000, stood superseded and the goods came to be actually seized on 22nd November, 2000, and the Customs authorities were, therefore, under an obligation to issue a show cause notice relating to confiscation of the goods u/s 124 of the said Act. Not having done

so within six months from 22nd November, 2000, the appellant-company was entitled to return of the seized goods u/s 110(2) of the said Act.

23. In our view, the learned Single Judge erred in applying the reasoning in Banthia's case (supra) to the facts of this case in arriving at the finding that actual seizure of the goods was effected on 1st March, 2001, and that the notice to show cause issued u/s 124 had been issued within the time indicated in Section 110(2) of the said Act.

24. The appeal, accordingly, succeeds. The order of the learned Single Judge is set aside. The respondents are directed to forthwith release to the appellants the goods described in Annexure P3 to the writ petition and covered by the order of detention passed by the Inspector, Customs, Varanasi Division on 9th November, 2000, u/s 110(1) of the Customs Act, 1962.

25. There will be no order as to costs.

26. All parties to act on a signed copy of the operative portion of this judgment on the usual undertakings.

Prayer for stay is considered and refused having regard to the views expressed by us.

Alok Kumar Basil, J.

27. I agree.