

HIGH COURT OF GUJARAT (D.B.)

**AMBALAL MORARJI SONI
V/S
UNION OF INDIA**

Date of Decision: 20 July 1971

Citation: 1971 LawSuit(Guj) 47

Hon'ble Judges: [B J Divan](#), [P D Desai](#)

Eq. Citations: 1972 AIR(Guj) 126, 1972 GLR 117

Case Type: Special Civil Application

Case No: 1633 of 1969

Subject: Customs

Head Note:

The whole object of giving notice as laid down in sec. 110(2) of the Customs Act and sec. 79 of the Gold Control Act is to inform the person concerned of the grounds on which it is proposed to confiscate the goods or to impose a penalty and to give him an opportunity to make a representation in writing within such reasonable time as may specified in the notice and he must be given reasonable opportunity of being heard in the matter. Looking to the object for which the notice is to be given it is clear that the notice must be given in the sense that the notice must reach the person concerned before the expiry of six months. If that is not done it cannot be said that the notice has been given to him. (Paras 7 and 8). The word given in sec. 124 of the Customs Act and sec. 79 of the Gold Control Act in the context in which it is used means actual communication of the notice to the person concerned either in writing or orally. But it must reach him before the expiry of the period of six months from the date of the seizure if the civil right to

get back the seized goods is not to accrue to him. (Para 9). Narasimhiah v. Singri Gowda Assistant Collector of Customs v. Charan Das Malhotra

Acts Referred:

[Customs Act, 1962 Sec 110\(2\)](#)

[Gold \(Control\) Act, 1968 Sec 79](#)

Final Decision: Petition allowed

Advocates: K S Nanavati, [I M Nanavati](#), [S N Shelat](#)

Reference Cases:

[Cases Cited in \(+\): 16](#)

[Cases Referred in \(+\): 2](#)

Judgement Text:-

Divan, J

[1] The petitioner herein is a goldsmith carrying on business of a dealer in gold ornaments and is the holder of a certificate issued under sec. 39 of the Gold (Control) Act, 1968, for carrying on business as a certified goldsmith. of 1 May 7, 1969, the residential premises of the petitioner were searched by the officers of the respondents viz., the Union of India, the Collector of Central Excise and Customs; and Superintendent (Technical), Central Excise & Customs; and at the time of the search gold and gold ornaments in all weighing 4455 grammes were seized under the relevant Panchanama. On November 8, 1969, the petitioner received two show-cause notices, both dated November 3, 1969. One of the show-cause notices was issued under the provisions of the Customs Act, 1962; and the other was issued under the provisions of the Gold Control Act. The notice under the Customs Act was issued by the Collector of Central Excise, Baroda, the second respondent herein and the notice under the Gold (Control) Act was issued by the Superintendent (Technical), Central Excise, Headquarters, Baroda, the third respondent herein. By the first show-cause notice, the petitioner was called upon to show cause why a penalty under sec. 112(4) of the Customs Act should not be imposed and the goods mentioned in the Schedule annexed to that notice should not be confiscated under the provisions of the Customs Act. By the

notice under the Gold (Control) Act, the petitioner was called upon to show cause why penalty should not be imposed and the gold seized from him should not be confiscated as the petitioner had been found to be in possession, custody and control of foreign gold weighing 98 grammes and other gold ornaments weighing 4357 grammes of which the petitioner had failed to keep an account in the prescribed form and manner. The petitioner has challenged the two show-cause notices and he has contended that since these notices were not given to him within a period of six months from the date of the seizure of the goods, the goods must be returned to him as he was the person from whose possession the gold and gold ornaments were seized; and the petitioner contends that on the expiry of the statutory period of six months, the respondents had no jurisdiction or power to initiate or continue any proceedings either under sec. 110 of the Customs Act or sec. 79 of the Gold (Control) Act; and he contends that under the provisions of the Customs Act as well as the Gold (Control) Act, an obligation has been imposed on the respondents to return the gold to the owner thereof or to the person from whose possession it has been seized if no notice as contemplated by the said provisions is given within a period of six months. The petitioner has, therefore, prayed for a writ of mandamus directing the respondents to hand over the possession and custody of the gold and gold ornaments seized from him on May 7, 1969 under the Pachnama.

[2] The facts which have been set out in the petition are not in dispute. In para 7 of the affidavit-in-reply filed by the second respondent herein, being affidavit, dated October 9, 1970, it has been stated that the two notices, both dated November 3, 1969, were handed over to the Postal Authorities on November 5, 1969 for delivery to the petitioner as provided under sec. 110 read with sec. 153 of the Customs Act and sec. 79 read with sec. 113 of the Gold (Control) Act, 1968.

[3] The main question that we have to consider is as to the meaning of the words : "notice has been given" as occurring in the relevant sections of the two Acts. Under sec. 110 of the Customs Act, 1962, if the proper officer has reason to believe that any goods are liable to confiscation under the Act he shall seize such goods. Proviso to sub-sec. (1) of sec. 110 is not material for the purposes of this judgment. Sub-sec. (2) of sec. 110 is material and is in these terms :-

"(2). Where any goods are seized under sub-sec. (1) and no notice in respect thereof is given under clause (a) of sec. 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." Sec. 124 of the Customs Act provides :-

"12. 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 penalty;

(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."

Sec. 153 of the Customs Act provides :-

"153. Any order or decision passed or any summons or notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board or the customs house."

read with sec. 124 of the Customs Act and is in these terms :-

"79. No order of adjudication of confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing-

(i) informing him of the ground on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and

(ii) giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires, of being heard in the matter :

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral:

Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

Explanation. Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made."

Sec. 113 of the Gold (Control) Act provides:-

"113. Service of order decision, etc. any order or decision passed or any summons or notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice, or sending it by

registered post, to the person for whom it is intended or his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the office of the Gold Control Officer."

Thus the provisions of the Gold (Control) Act are on this aspect in terms identical with those of the Customs Act. The question then arises as to when the notice contemplated by sec. 124(a) of the Customs Act and sec. 79 of the Gold (Control) Act can be said to have been given, as the Department contends, when it is issued by the officer concerned or can it be said to have been given only when it reaches the person concerned, as the petitioner contends.

[5] In *Narasimhiah v. Singri Gowda*, A.I.R. 1966 B.C. 330, the question before the Supreme Court was as to when a notice of calling a meeting contemplated by the provisions of the Mysore Town Municipalities Act, 1951, can be said to have been given. The main contention before the Supreme Court was that sufficient notice of the Specified general meeting was not given and it was in this connection that the Supreme Court considered the contention that the sending of the notice amounted to giving the notice. Das Gupta, J. delivering the judgment of the Supreme Court observed :-

"Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving "of a notice even though the person to whom it is tendered refuses to accept it. Thus as soon as the person with a legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given the giving is not complete.

The main object of giving the notice under sec. 27(3) is to make it possible for the Councilors to so arrange their other business as to be able to attend the meeting. For an 'ordinary general meeting the notice provided is of clear seven days That is expected to give enough time for the purpose. But a

lesser period of three clear days is [considered sufficient for special general meetings generally. The obvious reason for providing a shorter period of such meetings is that these are considered more important meetings and Councilors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a 'period of even less than three clear days notice would be sufficient.

The Legislature did intend that ordinarily the notice as mentioned should be given; it could not have been intended that the fact that the notice is of less than the period mentioned in the section and thus the Councilors had less time than is ordinarily considered reasonable to arrange his other business to be free to attend the meeting should have the serious result of making the proceedings of the meeting invalid."

[6] In our opinion, this decision of the Supreme Court clearly indicates that looking to the object for which the notice is to be given as provided in a particular piece of legislation, the Court has to consider whether the giving of the notice with the particular object in view is so material as to render the proceedings subsequent to non-compliance with such provision invalid or in the present case, whether the notice can be said to have been properly given as contemplated by law. The words in sec. 124 are "the owner of the goods or such person is given a notice in writing" so far as the Customs Act is concerned. Similar words are found in the Gold (Control) Act. The whole object of giving notice is to inform the person concerned of the grounds on which it is proposed to confiscate the goods or to impose a penalty and to give him an opportunity to make a representation in writing within such reasonable time as may be specified in the notice and he must be given reasonable opportunity of being heard in the matter.

[7] If the notice is not given within the period of six months from the date of the seizure as contemplated by sec. 110(2) of the Customs Act and sec. 79 of the Gold (Control) Act, the person concerned is entitled to have the goods returned to him. In *Assistant Collector of Customs v. Charan Das Malhotra*, 1971 (1) S. C. C. 697, it was held by the Supreme Court :-

"The right to restoration of the seized goods is a civil right which accrues on

the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure. Consequently such a vested civil right in the respondent cannot be defeated by an expert order of extension of time by the Collector. An opportunity to be heard should be available even in a case where extension is granted before the expiry of the initial six months, after which period also the respondent can claim the right to return of the seized goods."

In view of this decision of the Supreme Court it is clear that a civil right to get back the seized goods vests in the person concerned if notice is not given to him within the period of six months from the date of the seizure. It is clear that in the instant case the goods were seized on May 7, 1969, and the period of six months would, therefore, expire on November 6 1969; and the right vested in the petitioner from November 7, 1969, to get back the seized gold and gold ornaments. The relevant notices annexure B and C to the petition, were received by the petitioner on November 8, 1969 and as shown by the affidavit-in-reply, para 7, those notices were posted on November 5, 1969. Giving of the notice contemplated by sec. 124 of the Customs Act and sec. 79 of the Gold Control Act means that the notice must have been received because as pointed out by the Supreme Court in Narasimhiah 's case (supra), the giving of the notice is not complete unless and until it reaches the person concerned or its actual tender to him. Merely despatching of the notice to the address of the person does not complete the giving of the notice. In the instant case, therefore, the fact that the respondents despatched the notices by post on November 5, 1968, would not complete the giving of the notice. The giving of the notice should have been completed on or before November 6, 1968 i. e. notices should have reached the petitioner on or before November 6, 1969 or should have been tendered to him before that date. That was not done in the instant case and, therefore, as from November 7, 1969, the civil right to get back the seized goods accrued to the petitioner.

[8] We may mention that even apart from the decision of the Supreme Court in Narasimhiah 's case (supra), on a pure grammatical construction of sec. 124 of the Customs Act and sec. 79 of the Gold (Control) Act, it is clear that what the Legislature contemplates in each of these two cases is that the person concerned has to be given

the notice so that he may be informed of the ground on which it is proposed to confiscate the goods or impose the penalty on him and further so that he may be given an opportunity of showing cause against the grounds of such confiscation or penalty. Looking to the object for which the notice is to be given, it is clear, apart from authority, that the notice must be given, in the sense that the notice must reach the person concerned before the expiry of six months. If that is not done, it cannot be said that the notice has been given to him. Further, it may be pointed out that under the provisions of sec. 153 of the Customs Act and sec. 113 of the Gold (Control) Act, it is open to the authorities concerned to tender the notice in question to the person concerned without necessarily sending it by registered post in each and every case. The consequences of not accepting the notice when tendered by the postal authorities are very serious because then under sec. 153 of the Customs Act and sec. 113 of the Gold (Control) Act, it would be open to the authorities to serve the notice merely by pasting it on their own notice boards and it is not likely that any citizen would refuse to accept the notice tendered by the Postal Authorities when the consequences of non-acceptance would be to have the notice pasted on the notice board and the goods confiscated or the penalty imposed on him, ordinarily without his knowing as to what the grounds of confiscation or imposition of penalty are and without his getting an opportunity of showing cause against such grounds.

[9] We may also point out that with the consent of the person concerned both under the Customs Act as well as under the Gold (Control) Act, the notice can be oral and unless the grounds are communicated to him in person it cannot be said that the notice has been given to him orally. This is the further ground in support of our conclusion that the word "given" in the context in which it is used means "actual communication of the notice to the person concerned either in writing or orally." But it must reach him before the expiry of the period of six months from the date of the seizure if the civil right to get back the seized goods is not to accrue to him. In the instant case, it is clear on the facts narrated above that the notices in question at Annexures B and C to the petition, were not given within the period of six months from the date of seizure of the goods and further a right to get back the seized goods has vested in the petitioner. It was not open to the respondents Nos. 2 and 3 to proceed with the confiscation or imposition of penalty under the relevant provisions of the Customs Act or the Gold (Control) Act under these two show-cause notices. Hence the petitioner has become entitled to the return of the seized goods and we issue a Writ of Mandamus directing the respondents to hand over possession and custody of the seized goods to the petitioner; the goods being those referred to in the Panchnama, dated May 7, 1969, Annexure A to the petition.

Though the notices were not given within the time contemplated by sec. 110, it does not mean that the notices were bad and, therefore, it is not open to us to strike down the notices and hence the prayers in para 15(A) and 15(B) of the petition are not granted to the petitioner.

[10] Under these circumstances, this Special Civil Application is allowed and the writ as indicated above will issue. The rule is made absolute accordingly. The respondents will pay the costs of this petition to the petitioner. We wish to make it clear that we have taken into consideration only the provisions of the Customs Act and the Gold (Control) Act. If under the provisions of any other law these goods are required by the authorities concerned our direction will not operate.

Petition allowed.

