

2025 LiveLaw (SC) 922

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
J.B. PARDIWALA; J., SANDEEP MEHTA; J.
CIVIL APPEAL No. 3489 OF 2024; SEPTEMBER 11, 2025
UNION OF INDIA & ORS. *versus* JATIN AHUJA

Customs Act, 1962 - Section 110 – Held, provisional release of seized object won't extend time limit for issuing show cause notice in Pre-2018 cases - Where goods are seized under Section 110 of Customs Act and no notice under Section 124(a) is issued within prescribed or extended period, the consequence mandated by Section 110(2) is unconditional release to the person from whom the goods were seized - the existence or exercise of provisional release under Section 110A does not affect the statutory consequence mandated under Section 110(2) - when the statutory period for issue of show-cause notice under Section 124 of Customs Act lapses and extension is neither granted nor the conditions for further extension met, unconditional release of seized goods is mandatory under Section 110(2) - Provisional release orders under Section 110A do not override this consequence - Section 110A functions as an interim arrangement to allow release of goods, including perishable or fast-moving items, but does not in any way impede or limit the mandatory time limit in Section 110(2) - Appeal dismissed. [Relied on *Assistant Collector of Customs v. Charan Das Malhotra* AIR 1972 SC 689; Paras 11, 20-24]

WITH C.A. No. 3490/2024 C.A. No. 4176/2024 C.A. No. 5637/2024 C.A. Nos. 3492-3493/2024 C.A. No. 3491/2024 C.A. No. 3822/2024 C.A. No. 5535/2024 C.A. No. 5442/2024 C.A. No. 3823/2024 C.A. No. 3495/2024 C.A. No. 3494/2024 C.A. Nos. 3496-3497/2024 C.A. No. 3499/2024

For Appellant(s) Ms. Nisha Bagchi, Sr. Adv. Mr. Gurmeet Singh Makker, AOR Mr. Sarthak Karol, Adv. Mr. Navanjay Mahapatra, Adv. Mr. Ambar Qamaruddin, AOR Mr. Dhananjay Garg, AOR Mr. P.V. Yogeshwaran, Adv. Mr. Dinesh Kumar Garg, Adv. Mr. Abhishek Garg, Adv. Mr. B. Krishna Prasad, AOR Mr. Raj Bahadur Yadav, AOR

For Respondent(s) Mr. Pradeep Jain, Adv. Mr. Gopal Singh Chauhan, Adv. Mr. Shubhankar Jha, Adv. Mr. Sidhartha Joshi, Adv. Mr. Deepak Goel, AOR Ms. Abha R. Sharma, AOR Mr. Gunjan Tanwar, Adv. Mr. Rajeev Singh, AOR Mr. Raj Bahadur Yadav, AOR Mr. Mukesh Kumar Maroria, AOR Mr. Bijender Singh, Adv. Mr. Karan Malik, Adv. Mr. Rakesh Gogia, Adv. Mr. Tejasvi Kumar, Adv. Mr. Ambar Qamaruddin, AOR Mr. Kunal Malik, AOR(NP)

ORDER

1. Since the issues raised in all the captioned appeals are identical, those were taken up for hearing analogously and are being disposed of by this common order.
2. There are in all 14 appeals before us. Eleven are at the instance of the Revenue and three are at the instance of the respective assessees. Some of the appeals arise from the judgment and order passed by the Delhi High Court wherein the Revenue is the appellant whereas the other appeals arise from the judgment and order passed by the Bombay High Court wherein the assessees are in appeal before us.
3. For the sake of inconvenience, we treat C.A. No.3489/2024 as the lead matter.
4. This appeal arises from the judgment and order passed by the High Court of Delhi, dated 04.09.2012, in the Writ Petition (Civil) No.2952/2012, by which the High Court allowed the Writ Petition, filed by the respondent herein, declaring that the effect of nonissuance of show-cause notice, under Section 124 of the Customs Act, 1962 (for short, 'the Act 1962'), within the stipulated period as prescribed under Section 110(2) of the Act,

1962, would entitle the person, from whose possession goods are seized, for release of the same.

5. The facts giving rise to this appeal may be summarised as under:

6. The respondent herein questioned the legality and validity of the Seizure Panchnama dated 09.05.2012, drawn by the Directorate of Revenue Intelligence (DRI) before the High Court in connection with seizure of a car (Maserati). The respondent herein is engaged in the business of trading in imported brand new and domestically purchased second hand luxury cars. He purchased a brand new Maserati car on 07.12.2010. The Revenue, i.e., the DRI, in exercise of powers under Section 110 of the Act, 1962, detained the car on the same day and handed it over to the appellant vide a panchnama. Thereafter, by order dated 24.10.2011, the Commissioner of Customs extended the period for issuance of show-cause notice by a further period of six months w.e.f. 25.10.2011, under Section 110(2) of the Act, 1962. On 09.05.2012, the DRI, by panchnama cancelled the supurdarinama and took possession of the Maserati Car. In such circumstances, referred to above, the respondent went before the High Court by way of a Writ Petition seeking release of the car.

7. It was argued before the High Court on behalf of the respondent herein (original writ petitioner) that upon expiry of the period of one year from the date of seizure of the car, he was entitled to an unconditional release of the same.

8. On the other hand, while opposing the Writ Petition, it was argued on behalf of the DRI that since the car was provisionally released on 09.05.2012, under the provisions of Section 110A of the Act, 1962, the period during which the provisional order of release was in operation would entitle the DRI to say that the period of six months had not expired in accordance with Section 110 of the Act, 1962. The High Court looked into Section 110 of the Act, 1962, which reads thus:

"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 remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.

(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant consideration, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1-B) Where any goods, being goods specified under subsection (1-A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other

particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of sample so drawn.

(1-c) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(1-D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1-A), then, the proper officer shall, instead of making an application under sub-section (1-B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.

(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 Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under Section 110-A, the specified period of six months shall not apply.

(3) The proper officer may seize any documents or things which, in this opinion, will be useful for, or relevant to, any proceeding under this Act.

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

(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.”

9. The High Court, thereafter, looked into Section 110A of the Act, 1962, which reads thus:

“110-A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication.—Any goods, documents or things seized or bank account provisionally attached under Section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.”

10. In the last, the High Court looked into Section 124 of the Act, 1962, which reads thus:

“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 with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs 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 presentation 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.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

11. In para 7 of the impugned judgment, the High Court looked into the decision of this Court in the case of Assistant Collector of Customs v. Charan Das Malhotra, reported in AIR 1972 SC 689 : (1971) 1 SCC 697 for the purpose of explaining the fine distinction between Sections 110 and 124 of the Act, 1962 respectively. The High Court looked into few other decisions also of this Court. The High Court, thereafter, proceeded to explain the position of law as under:

"9. It can be gathered from the above discussion that the provision of Section 110(2) in so far as the prescription of a time limit for holding seized goods, is deemed mandatory; the consequence of not issuing a show cause notice within the period or extended period specified is clearly spelt out to be that the "goods shall be returned to the person from whose possession they were seized" (apparent from a combined reading of Section 110 (2) and its proviso). The corollary is not that the Customs authorities lose jurisdiction to issue show cause notice.

10. Now, such being the case, the question is if the customs authorities accede to a request to release the goods, under Section 110-A, would such event absolve or override the operation of Section 110 (2). It is to assert such a proposition that the respondents rely on the judgment of the Bombay High Court in Jayant Hansraj Shah. There, the request for release had been made within the period; however, the extended period of six months had not expired. The Court, in that context, ruled that:

"9. Under Section 110-A there is a power to provisionally release the seized goods pending order of adjudication on taking a bond in a proper form with security and conditions as the Commissioner of Customs may require. It is, therefore, clear that from the date of seizure till the order of adjudication the Commissioner of Customs has the power to release the goods provisionally. This power was exercised. The petitioner accepted this order of provisional release but wanted variation of the said order which he was informed could not be done.

10. Section 110 speaks of no notice being given under Clause (a) of Section 124 within six months of the seizure or confiscation of the goods. The procedure for confiscation of the goods can be resorted to if the goods are not provisionally released. If the owner in terms of Section 110-A applies for provisional release and an order is passed it can be said that the goods continue to be under seizure as the order under Section 110-A is a quasi judicial order. Section 110(2) would not be operative. It is only in the case where no provisional order is passed for release of the seized goods and if no notice is issued under Section 124(a) for confiscation of the goods then only would Section 110(2) apply and the respondent would be bound to release the goods. Any other reading of the section would mean that a person whose goods are seized would seek a provisional release of the goods, get an order of provisional release, allow the authorities to proceed to believe on that basis that such person seeks to release the goods provisionally and

on the expiry of the period of six months if notice is not issued under section 124(a) then contend that the terms for provisional release of the goods are no longer binding as the period of six months has expired and no notice has been served. The period of notice is only when the respondents seek to confiscate the goods. If there be a provisional release order it is not within the jurisdiction of the respondents to proceed to issue the notice under Section 124. At the highest they can proceed under Section 110(1A) by following the procedure set out therein. In our opinion, therefore, as procedure for confiscation could not have been initiated pursuant to the order of provisional release the contention urged by the petitioners that the goods should be released under Section 124 has to be rejected."

11. From the above judgments, the position of law on the issue of effect of expiry of one year period (six months, if no extension is granted) after the seizure of goods etc under Section 110 of the Act when there has been no show cause notice under sub-clause (2) is amply clear. Upon expiry of the one year period (or six months, as the case may be) the goods are returnable to the person from whose possession they were seized. The Bombay view, expressed in *Jayant Hansraj Shah* cannot be divorced from its context, and any effort to say that release under Section 110A would extinguish the operation of the consequence (of not issuing show cause notice, within the statutory period) spelt out in Section 110 (2) would be contrary to the plain meaning and intendment of the statute. This is because Section 110-A is by way of an interim order, enabling release of goods, (for instance, where they are fast moving, or perishable). The existence of such power does not in any way impede or limit the operation of the mandatory provision of Section 110 (2), particularly the time limit for issuance of show cause notice, in so far as it relates to the consequence of statutory dissolution of the seizure. There are no internal indications in Section 110-A that the amplitude of Section 110 (2) is curtailed, or the effect of the consequence (of transgressing the time limit, i.e statutory lifting of the seizure) being overborne, by use of devices such as a non-obstante clause or words such as "Nothing in Subsection (2) of Section 110 shall operate in the case where an order is made under this Section).

12. It is well settled that when a provision of law enjoins the performance of any act, and further mandates, the consequences for non-performance, the condition is mandatory. This was spelt out in the clearest terms by the Supreme Court in *Baru Ram v Parsaranni* AIR 1959 SC 93:

"Whenever a statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence" [See *Maqbool Ahmad v Onkar Pratap Narain Singh* AIR 1935 PC 85, *Jagan Nath v Jaswant Singh* AIR 1954 SC 210, *Manilal Mohanlal Shah v Sardar Sayed Ahmed Sayed Mahmad* AIR 1954 SC 349; *M.I Builders v Radhey Shyam Sahu* 1999 (6) SCC 464]. Thus, the effect of the statute, by virtue of Section 110 (2), is that on expiration of the total period of one year (in the absence of a show cause notice) the seizure ceases, and the goods which are the subject matter of seizure, are to be released unconditionally. There is nothing in Section 110-A to detract from this consequence. The public interest in injecting a sense of efficiency by mandating an outer limit to seizure orders, whenever the customs authorities contemplate an adjudication proceeding, is self-evident. But for the prescription of such an outer limit, Customs authorities would be entitled to claim and keep all manner of goods and valuables indefinitely, without any semblance of adjudication or even the preliminary step towards adjudication in the form of a show cause notice. In the case of goods with limited shelf life, or "fast moving" electronic articles, or even garments, which reflect the latest trends, even such limited seizure may result virtually in a confiscation, because they may be rendered worthless upon release."

12. Ultimately, the High Court in para 13 of the impugned judgment reached the conclusion that the failure on the part of the DRI to issue show-cause notice under Section 124 of the Act, 1962 within the time period, as prescribed, would entitle the original writ petitioner to get back his car which was seized. To put it succinctly, the view taken by the High Court is that the failure on the part of the authorities concerned to issue the show-

cause notice within the stipulated period of time rendered the proceedings to have been lapsed.

13. In such circumstances, referred to above, the Union of India is here before this Court with the present appeal.

14. We heard Ms. Nisha Bagchi, the learned Senior Counsel appearing for the Union of India.

15. None present on behalf of the respondent (original writ petitioner).

16. We take notice of the fact that before the Delhi High Court reliance was sought to be placed by the revenue on one decision of the Bombay High Court in the case of Jayant Hansraj Shah v. Union of India, reported in 2008 (229) E.L.T. 339 (Bom.). In the said decision, the Bombay High Court took the view that if there is a provisional release of the seized goods, in exercise of powers under Section 110A of the Act, 1962, then, in such circumstances, the period during which the seized goods remains provisionally released, has to be excluded for the purpose of calculating the limitation prescribed under Section 110(2) of the Act, 1962. In other words, the argument of the Revenue before the High Court, relying on the Bombay High Court's decision, was that whenever the power to issue show-cause notice is preserved and a request is made to release the goods taken into custody, there would be no question of unconditional release by operation of Section 110(2) of the Act, 1962. The Delhi High Court has explained well as to in what context the Bombay High Court rendered its decision.

17. It is difficult for us also to subscribe to the views expressed by the Bombay High Court in Jayant Hansraj Shah's case (supra). We are of the view that the only power that has been conferred upon the Revenue to extend the time period is in accordance with the first proviso to Sub-section (2) of Section 110 of the Act, 1962. The Delhi High Court is right in saying that any effort to say that the release under Section 110A of the Act, 1962 would extinguish the operation of the consequence of not issuing show-cause notice within the statutory period spelt out in Section 110(2) would be contrary to the plain meaning and intendment of the statute.

18. The Delhi High Court has done well to explain that this is so because Section 110A, is by way of an interim order, enabling release of goods like fast moving or perishable etc. The existence of such power does not, in any way, impede or limit the operation of the mandatory provision of Section 110(2).

19. In the case in hand, indisputably the car was seized under sub-section (1) and furthermore no notice in respect of the goods seized was given under clause (a) of section 124 of the said Act within six months of the seizure. The consequence, therefore, in such a case is that the goods shall be returned to the person from whose possession they were seized. The first proviso to sub-section (2) of section 110 of the said Act, however, provides that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend the six months' period by a period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified. The proviso therefore contemplates that the period of six months mentioned in sub-section (2) of section 110 of the said Act can be extended by the higher authority for a further period not exceeding six months, for reasons to be recorded in writing. The proviso also requires the higher authority to inform this to the person from whom such goods were seized before the expiry of the period of six months mentioned in sub-section (2) of section 110. We find that in respect of the seized car, there is neither any notice under clause (a) of section 124 issued to the respondent within six

months of the seizure nor the period of six months ever came to be extended for a further period of six months. In the absence of there being any notice as required by the first proviso even within the extended period upto one year, the consequence that ought to follow is release of the seized car.

20. It would be apposite or rather very relevant to state at this stage that having realised this difficulty, the legislature ultimately thought fit to enact the second proviso to Sub-section (2) of Section 110 of the Act, 1962.

21. We, however, must make a reference to the second proviso to sub-section (2) of Section 110 of the said Act. The first and the second proviso was substituted with effect from March 29, 2018.

22. The Finance Bill, 2018 reads thus: -

“The Finance Bill, 2018 (As Introduced in Lok Sabha)

Chapter IV

Indirect Taxes

Customs

Notes on clauses

Clause 90 of the bill seeks to amend section 110 of the Customs Act so as to give power to extend the period for issuing show-cause notice in the case of seized goods by a further period of six months and also to provide exemption from application of time-limit of six months to cases in which an order for provisional release of seized goods has been passed.

Memorandum explaining provisions

Section 110 of the Customs Act, 1962 is being amended so as to :

(a) substitute the existing proviso to sub-section (2) to provide that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend the six months period by a period not exceeding six months and inform the person from whom such goods have been seized before the expiry of the time mentioned in the said sub-section;

(b) insert second proviso to sub-section (2) providing that where any order for provisional release of the seized goods has been passed under section 110A, the aforesaid period of six months, mentioned in subsection (2), shall not apply.”

23. In the context of the Finance Bill and the provisos as amended, a reference to the decision of the Bombay High Court in Haresh S. Bhanushali v. Union of India (2021) 17 GSTR-OL 84 (Bom); (2021) 376 ELT 232 (Bom) is relevant. In paragraph 26, the Court has referred to the instructions issued dated February 8, 2017 of the Central Board of Indirect Taxes and Customs. Paragraphs 26 and 27 respectively read thus (page 92 of 17 GSTR-OL):

“The Central Board of Indirect Taxes and Customs has issued Instruction No. 1/2017-Cus., dated February 8, 2017 wherein paragraph Nos. 4 and 5 are relevant and are quoted hereunder:

‘4. In view of the above, in all future cases, the following may be adhered to:

Whenever goods are being seized, in addition to panchnama, the proper officer must also pass an appropriate order (seizure memo/ order/etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation. Where it is not practicable to seize any 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. In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner.

5. Further, it has been brought to the notice of the Board that cases where provisional release of seized goods is allowed under section 110A of the Act *ibid*, show-cause notices are not being issued within the stipulated time period on the ground that the goods have been released to the owner of the goods. The provisions of the Customs Act, 1962 are clear that irrespective of the fact whether goods remain seized or are provisionally released, once goods are seized, the time period (including extended time period) stipulated under section 110(2) of the Act shall remain applicable and has to be strictly followed.’

A conjoint reading of the above provisions along with the above instructions dated February 8, 2017 issued by the Central Board of Indirect Taxes and Customs would go to show that the concerned authority is required to issue show cause notice within six months of seizure failing which the seized goods shall be returned to the person from whose possession those were seized....”

24 . The appeals before us are all anterior in time to the coming into force of the second proviso to Section 110(2) of the Act, 1962. Although, it is not necessary for us to say anything further, yet we may clarify that the time period to issue notice under Clause (a) of Section 124 is prescribed only in sub-section (2) of Section 110 of the Act, 1962. This time period has nothing to do ultimately with the issuance of show-cause notice under Section 124 of the Act, 1962. The two provisions are distinct and they operate in a different field.

25 . In view of the aforesaid, all the eleven appeals preferred by the Revenue stand dismissed and the two appeals filed by the assesseees against the Bombay High Court judgment stand allowed.

26 . Since the issues involved in C.A. No.3499/2024 are different, we have thought fit to de-tag it. We shall hear it separately. List the same after four weeks.

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