IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4495 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

and
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

==

AMIT HARISHKUMAR DOCTOR
Versus
UNION OF INDIA & 3 other(s)

==

Appearance:
MR. S S IYER(6553) for the Petitioner(s) No. 1
for the Respondent(s) No. 3,4
DS AFF.NOT FILED (N) for the Respondent(s) No. 1,2
NOTICE SERVED for the Respondent(s) No. 1,2
PRIYANK P LODHA(7852) for the Respondent(s) No. 3,4

==

CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 18/02/2022

ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

Downloaded on : Thu Mar 03 11:30:26 IST 2022

1. This is a petition preferred under Article 226 of the Constitution of India.

2. Brief facts leading to the present petition are as follow:

2.1 The petitioner is a sole proprietor of JBM Textiles, Surat and is engaged in the business of textile trading and export. The Directorate of Revenue Intelligence ('the DRI' hereinafter), Ahmedabad Zonal Unit, Ahmedabad had, on receipt of intelligence, searched the office premise of the petitioner on dated 03.04.2019 where the cash amount of Rs.35,99,000/- belonging to the petitioner and his family members and two mobile phones also were seized by the officers. Panchnama was drawn on seizure by the officers where the signature of the petitioner was taken on 04.04.2019 which as

Downloaded on : Thu Mar 03 11:30:26 IST 2022

explained by him, was a forcible act thrust upon him by the respondents.

2.2 The statement of the petitioner was recorded on 04.04.2019, after the panchnama proceedings dated 03.04.2019. There was no proposal for confiscation of seized cash of Rs.35,99,000/- and also of mobile phones, computer and documents seized during this proceeding.

2.3 A show cause notice came to be issued on 27.11.2020 in respect of the alleged illegal export by one M/s.Amira Impex in connivance of number of other persons which included the petitioner, as alleged by the respondents. This show cause notice was received by the petitioner on 14.12.2020.

सत्यमेव जयते
THE HIGH COURT OF GUJARAT
WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

2.4 As averred by the petitioner, 19 months elapsed after the seizure. No notice since had been issued within a period of six months as statutorily prescribed from date of the seizure, the seized cash and mobile phones were needed to be returned to the petitioner and his family, hence, this petition.

3. This Court at the time of issuance of notice passed the following order on 22.9.2021:

> *"1. The petitioner is before this Court seeking the return of the seized cash amounting to Rs.35,99,000/- belonging to the petitioner and his family members and two mobile phones seized from the office of the petitioner on 03.04.2019 without issuance of any show cause notice and in violation of provisions of Section 110 (2) of the Customs Act, 1962 with the following prayers:*
>
> > *"17...*
> >
> > *(A) This Hon'ble Court may be pleased to hold that the impugned panchnama proceedings dated 03.04.2019 as well as the non-return of the seized*

Downloaded on : Thu Mar 03 11:30:26 IST 2022

currency of Rs.35,99,000/- belonging to the petitioner and his family members along with two seized mobile phones after expiry of the statutory period of six months provided in section 110(2) of the Customs Act, 1962 is ex-facie illegal, non-est and ab initio void due to violation statutory provisions in Section 110 and other provisions of the Customs Act, 1962 as interpreted by the Courts of law in respect of return of seized currency, goods and things lying with the authorities without issue of show cause notice within the period prescribed in said section.

B. That this Honourable Court may be pleased to hold that the seized currency amounting to Rs.35,99,000/- (Rupees Thirty Five Lakh Ninety Nine Thousand Only) and two mobile phones be returned to the petitioner forthwith by the Respondent No.3 and Respondent No.4 herein.

C. That this Hon'ble Court may be pleased to issue a writ of mandamus or in the nature of mandamus or any other writ, order or direction quashing and setting aside the impugned seizure and continued retention of the currency and two mobile phones through panchnama proceedings dated 03.04.2019 for the period beyond the expiry of six months, that is, beyond 03.10.2019 without issue of show cause notice under Section 124 of

Downloaded on : Thu Mar 03 11:30:26 IST 2022

the Customs Act, 1962 as lacking in jurisdiction, harsh, unfair, illegal, absurd and therefore non-est with consequential relief to the Petitioner as per Prayer B above;

D. That this Honourable Court may be pleased to grant ad-interim and interim reliefs in terms of prayer (C) above pending admission, hearing and final disposal of this Special Civil Application.

E. For award of the costs of this Petition.

F. For such other and further or incidental reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

2. We have heard extensively the learned advocate, Mr.S.S.Iyer appearing for the petitioner, who also has taken us through the material which has been placed on record and also the Circular No.07 of 2013 dated 19.03.2013 based on the decision of the Delhi High Court rendered in case **Kore Koncepts vs. Deputy Commissioner of Customs**, reported in **2016 (333) ELT 76.** Reliance is also placed on the decision of this Court rendered in case of **Deepak Natvarlal Soni vs. Union of India**, reported in **2019 (368) ELT 27.** His emphasis is therefore, since six months from the date of seizure as no show cause notice under Section 124 of the Customs Act for the good seized

Downloaded on : Thu Mar 03 11:30:26 IST 2022

has been issued, there shall need to be returned of the seized goods.

*3. Issue **urgent NOTICE,** returnable on **13.10.2021**.*

4. Over and above the regular mode of service, direct service through speed post as well as e-mode is also permitted."

4. In reply to the show cause notice, the respondents appeared and their reply has also been tendered before this Court.

4.1. In the affidavit-in-reply, it has been denied that there has been any violation of the provision of law. According to the respondents, since it is a case of a large scale illegal availment of the export benefits, no indulgence is necessary. It is also contended by the respondents that specific information had been received by the DRI, Ahmedabad that

Downloaded on : Thu Mar 03 11:30:26 IST 2022

certain export firms were wrongly availing export benefits including IGST refund on the basis of bogus/overvalued exports, therefore, the operation had been carried out at the premise of Shri Kuberji Textiles Park by a joint team of DRI and Directorate of General of Goods and Service Tax Intelligence, Ahmedabad (DGGI) and the panchnama had been drawn in presence of three persons namely Shri Mihir Mahesh Chevli, Mr.Amit Doctor and Mr.Aazam Sabuwala. They jointly operated different firms which included eight firms and those persons had admitted that they were not proprietors/partners/directors of any of the firms.

4.2 The Indian currency notes totaling Rs.1,00,85,100/- had been seized out of

Downloaded on : Thu Mar 03 11:30:26 IST 2022

which Rs.35,99,000/- is claimed by Shri Amit Doctor. These three persons were getting commission from third party export in Export Promotion Capital Goods (EPCG) Scheme in cash. They arranged invoices in the name of export firm, but no goods were physically received under the said documents and they made payment towards this said supply on paper from the account of the respective export firms and the money were returned back to them by the respective supplier in cash or by middleman through whom the said bills were arranged. The cash amount received by them were in the form commission from the third party export in EPCG Scheme and the money returned back by the supplier on paper. As no proper and satisfactory reply was received during the search, the DIR and

सत्यमेव जयते THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

DGGI officers had detained the cash for further verification. Statements were also recorded under Section 108 of the Customs Act, 1962 ('the Act' hereinafter) and the *modus operandi* has been explained by those present.

4.3 The amount, according to the respondents, which has been claimed by Shri Amit Doctor was the amount of IGST refund, which was fraudulently availed and that needed to be treated as EPCG commission income and was liable to be taxed under the GST Act. Both the income of EPCG commission and IGST refund were received in cash covered under the GST Law. The statements recorded of the petitioner and other are contended to voluntary without adopting any coercive measure. Allegation of force on

Downloaded on : Thu Mar 03 11:30:26 IST 2022

expiry of 21 months is afterthought on the part of the petitioner. Emphatically further contended that DRI and DGGI are organizational structure of Central Board of Indirect Taxes and Customs. The cash seized is amount of commission and IGST refund wrongly availed. DGGI is claimed to be the proper authority to appropriate the said amount against the IGST refund wrongly availed and the cash was transferred to DGGI, Ahmedabad as the total IGST refund wrongly and illegally availed is of the tune of Rs.3,27,61,295/-, which is alleged to be a grave economic offence and hence request is not to interfere.

THE HIGH COURT OF GUJARAT WEB COPY

5. The learned advocate, Mr.S.S.Iyer for the petitioner and learned senior standing counsel, Mr.Priyank Lodha for the

Downloaded on : Thu Mar 03 11:30:26 IST 2022

respondents-department have been heard extensively.

6. The short question for consideration is as to whether the show cause notice given under Section 124 of the Act after six months of seizure can be sustained under the law.

7. The challenge made is also to the alleged arbitrary action on the part of the respondents-authority in retaining the cash amount of Rs.35,99,000/- along with two mobile phones and other material seized from the office of the petitioner on 03.04.2019. The seizure of goods and the cash by the respondents is under section 110 of the Customs Act and Section 124 of the Act provides for the show cause notice

THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

to be issued for the confiscation of the goods.

7.1 The key contention raised by the petitioner is that the respondents-authority has not followed the mandate provided under Sub-section (2) of Section 110 of the Act that the goods seized under Sub-section (1) of Section 110 of the Act shall need to be returned to the person from whom they were seized. As provided under Sub-section (2) of Section 110 of the Act, if no show cause notice is given under clause (a) of Section 124 of the Act in respect of such goods, cash and the articles within six months of the seizure of the goods, the same needs to be refunded to the person from whom they are seized.

सत्यमेव जयते
THE HIGH COURT OF GUJARAT
WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

7.2 The amendment in the Finance Act, 2018 provided that the sufficient cause being shown, such period could be extended by the Principal Commissioner of Customs or Commissioner of Goods for a period not exceeding six months.

7.3 Section 124 of the Act provides that no order of confiscation of any goods or imposing of penalty on any person is to be made under Chapter XIV, unless the notice has been served upon the person who is the owner of the goods, in writing with prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs informing the grounds on which it is to be confiscated or for imposition of penalty.

THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

7.4 The mode of service of notice prior to the amendment by Finance Act, 2018 included the summons or notice issued under Section 153 of the Act. This Court (Coram:Justice Anant S. Dave & Justice Biren Vaishnav) in case of ***Deepak Natvarlal Soni vs. Union of India,*** reported in ***2019 (368) ELT 27*** (Guj.) was considering the similar issue and addressed this question of issuance of the notice as envisaged under Section 110(2) *vis-a-vis* Section 124 and Section 153 which is no longer *res integra.* After a detailed discussion, it had held that the action of respondents-authority in not returning the goods seized upon failure to comply with Sections 110(2), 124 and 153 of the Act, is illegal and the writ petition was allowed by directing the respondents to return all gold ornaments/gold items and two apple I-

Downloaded on : Thu Mar 03 11:30:26 IST 2022

phones seized under panchnama to the petitioner within a specified period unconditionally subject to adjudication process to be carried out afresh in accordance with law.

7.5 The relevant paragraphs will be profitably reproduced:

> *"9. Having heard learned counsels appearing for the parties, at the outset, outcome of adjudication proceedings resulting into finality with regard to subject seizure of goods at the end of competent authority, no record is produced and no affidavit is filed in this regard.*
>
> *The issue about giving notice so envisaged under Section 110 (2)of the Customs Act, 1962 vis-a-vis Section 124 and Section 153 is no more res integra.*
>
> *For better appreciation and above provisions of Customs Act, 1962 we produce herein below such provisions governing seizure in the year 2017 that is before amendment carried out by Finance Act, 2018.*
>
> *"110. Seizure of goods, documents and things.-(1) If the proper officer has reason to believe that any goods are*

Downloaded on : Thu Mar 03 11:30:26 IST 2022

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.

(1A) xxx

(1B) xxx

(a) ....

(b) ....

(c) ....

(1C) xxx

(2) Where any goods are seized under subsection (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 Principal Commissioner of Customs or Commissioner or Customs for a period not exceeding six months.}

(3) xxx

(4) xxx

Downloaded on : Thu Mar 03 11:30:26 IST 2022

Section 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 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.

153. 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 or by such courier as may be approved by the Commissioner of Customs;

Downloaded on : Thu Mar 03 11:30:26 IST 2022

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

10. It is not in dispute that seizure of goods in question was effected on 11.2.2017 in the arrival hall of terminal No.2 of SVPI Airport, Ahmedabad, in presence of panchas and seizure memo was issued accordingly on the same day. Further, request was made by the petitioners for returning seized ornaments and 'I phones' on 19.8.2017, reminder dated 1.9.2017 wherein reference was made to seizure memo dated 11.2.2017 and various decision of Delhi High Court and also that of Supreme Court which mandated return of seizure goods in case of failure of giving notice within six months from the date of seizure which was over in the facts of the case on 11.8.2017. That reply dated 12.9.2017 was received from the office of Assistant Commissioner, Customs, Ahmedabad wherein it was stated that show cause notice dated 9.8.2017 has been issued from file No. VIII/10-12/SVPIA/O&A/2017 by the Additional Commissioner, Customs, Ahmedabad and was delivered at the residence of the petitioners under proper panchnama dated 10.8.2017 since residential premises of the petitioners was found to be locked. In addition to the above, a copy of show cause notice was also affixed on the notice board of Customs House, Ahmedabad on 10.8.2017 in terms of provisionsof Section 153 (b) of the

Downloaded on : Thu Mar 03 11:30:26 IST 2022

Customs Act, 1962 and, therefore, seized articles were not to be released and the petitioners were requested to join the adjudication procedure. The above fact is reflected in the affidavit dated 30.10.2017 filed by Dy. Commissioner of Customs (Air Intelligent Unit) SVPI Airport, Ahmedabad.

11. In view of the above stand it is categorically stated by the petitioners that they had not received any such notice given by the authority and claim about service of notice by fixation by inserting the same in the residential premises in presence of panchas or fixation of such notice on the notice board of the Customs House etc. were denied and, for which, the petitioners had no knowledge. It was further stated that Mr. Deepak Soni, petitioner no. 1was admitted to the hospital for heart ailment. They had not attended even their business, however, son of petitioner no.1 was through out available at the shop as he was looking after the business when the petitioner no.1 was unwell. It is further borne out from the record, various summons were issued by custom authorities to appear and cooperate but had no occasion the petitioners remained present before the authority. That apart, no record is available or produced before this Court that show cause notice was given in terms of Section 110 (2) read with Section 124 and service thereof as envisaged under Section 153 of the Act, 1962. That so called panchnama drawn by the authority reveal that two panchas were taken from

Downloaded on : Thu Mar 03 11:30:26 IST 2022

Amraiwadi and Vastral area of Ahmedabad away at the distance of more than 20 Km. And in their presence residential house of the petitioners was found locked and no person was available there. Since it was raining, it was thought fit not to fix the notice and it was inserted through grill of the door of the house of the petitioners in a green colour polythene bag.

12. If the law in this regard is considered in the case of Ambalal Moraraji Soni (supra) this Court by considering provisions of Gold (Control) Act and also that of Section 124 of Customs Act, 1962 refer to decisions of the Apex Court in the case of Narasimhiab v. Singri Gowda, AIR 1966 SC 330 where giving notice was interpreted that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given the giving is not complete. Even the Apex Court also considered concept of reasonable opportunity to be given of being heard and other aspects. Further by referring to Section 110 (2) of Customs Act and Section 79 of the Gold (Control) Act, this court referred to the case of Assistant Collector of Customs v. Charan Das Malhotra AIR 1972 SC 689 in which it was held as under:

> *"The right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months ad which is defeated on an extension being granted, even though such*

Downloaded on : Thu Mar 03 11:30:26 IST 2022

> *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 ex parte 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 expiry of the initial six months, after which period alone the respondent can claim the right to return of the seized goods."*

Thereafter, discussing the facts of the case on hand the Division Bench held as under:

> *"Giving of the notice contemplated by Section 124 of the Customs Act and Section 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, AIR 1966 SC 330 (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. I 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*

Downloaded on : Thu Mar 03 11:30:26 IST 2022

> *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."*

13. That in another decision in the case of Purushottam Jajodia v. Director of Revenue Intelligence, New Delhi, once again considered the case of K. Narasimhiah (supra) AIR 1966 SC 330 and reiterated that notice can be regarded as 'given' only when it is received by the party and mere its issues within the said time-limit not sufficient. Again in the case of New Drug Y Chemical Co. v. Union of India (supra) the Division Bench of Bombay High Court considered requirement of compliance of provisions of Section 153 (a) of Customs Act, 1962 held that sending of order by "Speed Post" is not sufficient compliance of the above provisions and order is to be served upon assessee or his agent sending it by Registered Post A.D. Or by other modes of service and that Section 153 (a) will come into play only when service was not envisaged under Section 153(a) is not possible then only affixation of notice board of the Customs House is permitted.

14. Thus, in the facts of this case submissions made by learned counsel for the petitioner and facts as well as on law remained virtually un-answered and the petitioners

Downloaded on : Thu Mar 03 11:30:26 IST 2022

were not given notice so envisaged under Section 110 (2) read with Section 124 and Section 153 of the Customs Act, 1962 and the case on hand is covered by the decision to which we have made reference in earlier paragraph and the case of the petitioners is further strengthened that procedure followed by drawing panchnama etc. was of no use and the same cannot be termed as compliance with provisions of the Act, 1962, Even the decision relied on by Mr. Mitesh Amin, learned advocate for the respondents in the case of vs. Ram Kumar Agarwal reported in 2012 (280) ELT 13 (M.P.)submitted that the Bombay High Court simply considered provisions of Section 110 (2), 124, 153 of the Customs Act and in the facts appeared before it, appeal filed by the authority was allowed. In the above case also the court concluded that service of notice will be complete either by tendering or by sending the same by registered post A.D. And such facts cannot be equated with the facts of this case and that of High Court of Karnataka dated 22.4.2015 in the case of K.Abdulla Kunhi Abdul Rahaman will have no bearing on the facts of this case since it was categorically placed on record by the department that show cause notice was already despatched on 13.3.2014 which came to be delivered on the petitioner on 17.3.2014 after the expiry of two days of period of six months so envisaged under Sub-Section (2) of Section 110 of the Act.”

Downloaded on : Thu Mar 03 11:30:26 IST 2022

7.6 In case of ***Kore Koncepts vs. Deputy Commissioner of Customs (SIIB)***, reported in ***2016(333) E.L.T.76 (Del.)*** where the show cause notice was not issued within stipulated period according to the Court, the seizure order would not sustain and the goods which were released earlier provisionally were held to have been released unconditionally and the Bank Guarantee furnished at the time of provisional release would cease to operate, the same also was required to be returned following the earlier decision of ***Jatin Ahuja vs. Union of India***, reported in ***2013(287) E.L.T. 3 (Del.)***. The High Court of Delhi in case of Jatin Ahuja (supra) held as under:-

> *"9. It can be gathered from the above discussion that the provision of Section 110(2) insofar as the prescription of a time limit for holding seized goods, is deemed mandatory;*

Downloaded on : Thu Mar 03 11:30:26 IST 2022

the consequence of not issuing a show cause notice within the period or extended period specified is clearlys pelt 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.

13. In the light of the above discussion, the Petition has to succeed. It is declared that the effect of non-issuance of show cause notice under Section 124 in this case, has resulted in the operation of Section 110(2) and the statutory dissolution of the seizure order made in the case of the Petitioner's car. The said vehicle 'released provisionally and subject to conditions under Section 110A' shall be deemed to have been unconditionally released. If the Maserati car has not been released, the same shall be released within two weeks and the superdarinama is hereby quashed. The writ petition is allowed in the above terms;no costs."

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT
WEB COPY

8. Reverting to the facts on hands, M/s. Amira Impex of Maharashtra engaged in the business of various items is alleged to have indulged in gross over valuation and mis-declaration of the export goods with an

Downloaded on : Thu Mar 03 11:30:26 IST 2022

intent to wrongfully avail IGST refund in various other export related incentives.

9. A search was conducted at the office premise of the proprietor of JBM Textiles Shri Amit Harishankar Doctor and also of Shri Mihir Mahesh Chevli and Shri Aazam Sabuwala at Surat. The statements were recorded of the authorized signatory of about eight firms, which were also operating independently from the same premise. It also was alleged that the export of the goods were made in the names of five firms out of the eight firms which were called upon to show cause to the Additional/Joint Commissioner of Customs for FOB value of export goods under the provision of Section 14(1) of the Act read with Rule 8 of Customs Valuation

Downloaded on : Thu Mar 03 11:30:26 IST 2022

(Determination of Value of Export Goods) Rules, 2007 and under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rule, 2007.

10. The notice for confiscation and penalty also was given under the Act on 27.11.2020. Admittedly, the search proceedings had been carried out as per the panchnama drawn and placed before this Court on 03.04.2019. The statements have also been recorded on 04.04.2019 and a show cause notice had been issued on 27.11.2020 for the alleged illegal export attempted by M/s.Ameera Impex by the Additional Director of Revenue Intelligence-respondent No.4, served upon the petitioner on 14.12.2020. Admittedly, this notice of confiscation is

Downloaded on : Thu Mar 03 11:30:26 IST 2022

issued beyond the prescribed statutory period of six months.

10.1 The interim reply to the said show cause notice was filed on 12.01.2021. Since not responded, a reminder had also been sent on 21.01.2021. The cash and the seized articles since continued to be with the respondents, present petition has been preferred.

10.2 Mandate of Sub-section (2) of Section 110 of the Act is crystal clear that if no notice is given under clause (a) of section 124 of the Act for confiscation 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 for reasons to be

सत्यमेव जयते THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Thu Mar 03 11:30:26 IST 2022

recorded in writing can extend this period, not exceeding the period of six months and inform the concerned person from whom such goods were seized before expiry of the period so specified. It is further needed to be specified that where an order for provisional release of the seized goods has been passed under Section 110 A of the Act, the specified period of six months shall not apply.

11. In the instant case, admittedly there has been no provisional release of the seized goods. Further extension of six months with the reasoned order by the Principal Commissioner of Customs or Commissioner of Customs also is completely missing. The period of six months from the date of signature expired on 03.10.2019.

Downloaded on : Thu Mar 03 11:30:26 IST 2022

Even further period of six months as provided in the first proviso to Section 110(2) also got over on 03.04.2020. Of course, in absence of any order, much less reasoned order by prescribed authority, extension would need to be disregarded yet, the respondents chose not to return the seized currency or mobile phones and the request of the petitioner has not been addressed nor replied to.

12. Noticing that the period prescribed under the law has already lapsed long before the show cause notice has been issued, this Court needs to intervene for this being a clear violation of statutory provisions of section 110 and other provisions of Customs Act, these items are required to be returned to the petitioner.

Downloaded on : Thu Mar 03 11:30:26 IST 2022

13. The Court notices that nothing has been explained in the entire reply of 27 paragraphs with regard to the non compliance of the statutory mandate under Section 110(1)(2) read with Section 124 of the Act. It is quite unfathomable as to why the time limit is not adhered to and issuance of the show cause notice has been delayed beyond the statutory time period and hence, intervention will be necessary at the end of this Court by keeping open the rights of the respondents to initiate adjudication process afresh in accordance with law.

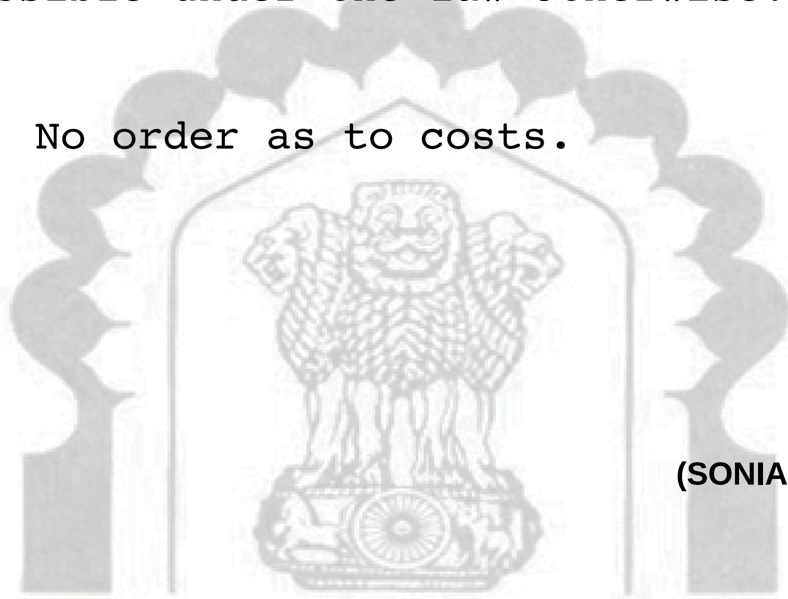
THE HIGH COURT OF GUJARAT WEB COPY

14. Resultantly, present petition is allowed. Respondents shall return the cash and articles/goods to the petitioner not

Downloaded on : Thu Mar 03 11:30:26 IST 2022

later than period of eight weeks seized from the petitioner. Respondents shall be at liberty to initiate action of adjudication, in accordance with law, if permissible under the law otherwise.

15. No order as to costs.


सत्यमेव जयते
THE HIGH COURT
OF GUJARAT
WEB COPY

(SONIA GOKANI, J)

(HEMANT M. PRACHCHHAK,J)

M.M.MIRZA

Downloaded on : Thu Mar 03 11:30:26 IST 2022