



2024:DHC:6468-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19 July 2024
Judgment pronounced on: 27 August 2024

+ W.P.(C) 10971/2023
ELENA SHVEDOVA

..... Petitioner

Through: Mr. D.S. Chadha, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Anushree Narain,
Standing Counsel with
Ms. Nishtha Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

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RAVINDER DUDEJA, J.

1. Petitioner has preferred the instant writ petition seeking the following reliefs:-

“a) Issue a Writ Order or direction in the nature of Mandamus or any other appropriate Writ, order or direction for Release / Return / Re-export the gold to the Petitioner.

FACTUAL BACKGROUND:

2. Petitioner is a foreign national and a resident of Moscow, Russia. As per averments in the petition, petitioner purchased five gold bars, weighing 1075 grams from her bank in Russia.



3. Petitioner came to India and brought the said five gold bars for making jewellery and taking back to her country.

4. Petitioner was intercepted by the Customs Officers near the green channel . The gold bars were seized by the Customs Officers vide Detention Receipt No. 61069 dated 21.01.2023. Petitioner was forced to sign pre-narrated documents, which were in English language. Petitioner later returned to her country and sent a letter dated 07.02.2023 to the Commissioner of Customs stating the ordeal, she had undergone. She sent yet another letter to the Commissioner of Customs wherein she requested not to sell her gold.

5. It has been stated that no Show Cause Notice [“SCN”] has been given to the petitioner till date under Section 124 (a) read with Section 110 of the Customs Act, the said gold should therefore be returned to her unconditionally.

6. In its counter affidavit, Revenue stated that the SCN dated 03.07.2023 was issued by the Competent Authority within the stipulated time period and the same was also sent to the petitioner by email dated 04.07.2023 but petitioner did not file any reply to the same.

SUBMISSIONS:

7. Learned counsel for the petitioner submits that no SCN as per Section 153 of the Customs Act, 1962 was served upon the petitioner. It is submitted that the mode of service of the alleged notice to the petitioner was by way of speed post through Ministry of Law & Justice but without providing the complete address of the petitioner to be



served and this fact has been concealed by the respondent, inasmuch as, the SCN sent to Ministry of Law & Justice was returned back to the Assistant Commissioner of Customs on 10.08.2023 for not providing the complete and correct address of the party to be served upon. It is submitted that petitioner did not receive any email forwarding the SCN from the email address "Pre.ShiftC@gmail.com" as stated in the counter affidavit and the inbox of the email of the petitioner also does not reflect any such mail having been received from respondent No. 2. It is further submitted that even otherwise, the e-mail sent is not valid as per Para 2.1 of the E-mail Policy of India, passed by the Ministry of Communications & Information Technology.

8. Per contra, the learned Standing Counsel for respondent No. 2 has submitted that the SCN has been duly served to the petitioner through e-mail. The e-mail has not bounced back, therefore, there is a presumption of due service of notice upon the petitioner.

REASONS & ANALYSIS

9. Before considering the merits of the contentions of the parties, it would be apposite to examine the relevant legal framework.

10. Section 110(2) of the Customs Act, 1962 reads as under:-

"110. Seizure of Goods, Documents and Things. -

(1)

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of



Customs or Commissioner of Customs for a period not exceeding six months."

11. Section 124 of the Customs Act deals with issuance of SCN before the confiscation of goods, which reads as under:-

" 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....."

12. The manner in which the notice is to be served is provided in Section 153 of the Act, which reads as under:-

[153. Modes for service of notice order, etc.—(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

[(ca) by making it available on the common portal;]



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(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

13. It is manifest that under Section 110(2) of the Customs Act, a notice under Clause (a) of Section 124 has to be issued to the owner of the goods or other person concerned within six months of the seizure of the goods, failing which, such goods shall be returned to the person from whose possession they were seized. Section 153 of the Act prescribes the modes of service of such notice. The methods indicated in Section 153(1) are alternative methods, anyone of which could be attracted in the first instance.

14. Undisputedly and as admitted, the SCN dated 03.07.2023 was attempted to be served to the petitioner by displaying the notice on the notice board of IGI Airport, Terminal-3, but the same is not a valid service, inasmuch as, petitioner is admittedly a foreign national and was not residing in India at the relevant time.

15. Yet another attempt was made to serve the SCN to the petitioner through Ministry of Law & Justice at the address provided by the



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noticee before the Superintendent, Customs in her statement dated 21.01.2023 under Section 108 of the Customs Act, 1961 and also on the basis of her passport details, but the same was returned back on 10.08.2023 for not providing the complete and correct address of the petitioner.

16. The SCN was then sent on the e-mail address, as provided by the petitioner in her statement dated 21.01.2023 at her e-mail address elshvedova@yandex.ru, in terms of Section 153(2)(c) of the Customs Act, 1961. It is not disputed that the aforesaid e-mail address is the correct e-mail address of the petitioner.

17. Para-2.1 of the e-mail Policy of the Government of India provides that only the e-mail services provided by the NIC shall be used for official communication by all organizations. Admittedly, notice was not sent through the NIC mail ID but through g-mail ID. The e-mail Policy was issued in February 2015. The e-mail as a mode of delivery was inserted in section 153 of the Customs Act, 1962 vide Finance Act, 2018 (Act 13 of 2018) dated 29.01.2018. The amendment in Section 153 of the Customs Act vide Finance Act, 2018 does not put any bar on using e-mail service provided by other than government agency. The SCN was served on the e-mail address provided by the noticee herself in her statement dated 21.01.2023. The e-mail Policy has no overriding power over the statutory law. Thus, merely because the SCN was forwarded to the petitioner using the e-mail service provided by other than that of Government Agency, would not render the service of SCN as invalid.



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18. Petitioner made a failed attempt to show that she did not receive any e-mail dated 04.07.2023, by placing on record the screen-shot of the inbox taken from the mobile phone. However, the same cannot be relied for the reason that as per certificate under Section 65-B of the Evidence Act filed by the petitioner, such digital record was taken out from the computer and not from the mobile phone. The screen-shot of inbox produced by the petitioner is therefore not a trustworthy document and cannot be relied upon.

19. The gold bars were admittedly seized on 21.01.2023, while the SCN was served through e-mail to the petitioner on 04.07.2023. The SCN was served within a period of six months, as provided under Section 110 (2) of the Customs Act, 1962, and therefore that being so, petitioner is not entitled to the release of gold bars at this stage.

20. For the aforesaid reasons, we do not find any merit in the instant writ petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

27 August, 2024

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