CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/20823-20824/2018-SM

[Arising out of No. 95-96-2018 dated 26/02/2018 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Shri Ismail Ibrahim
S/o shri Ibrahim
Old No.98, New No.60,
Taiyappa Mudali Street,
Seven Wells, Chennai – 600 001.

Appellant(s)

Shri Sudharshan Ashok Kumar
S/o Shri Ashok Kumar No 12/27 West Chetty
Street South Avanimoolaveethi
MADURAI
TAMILNADU
625001

Versus

C.C-Bangalore-cus
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Shri M.S. NAGARAJA, ADV
#1010, 1st floor
(Above Corp.Bank) 26th Main,4th T Block,
Jayanagar,
Bangalore
Karnataka
560041

For the Appellants

Smt. Kavita Podwal, Superintendent(AR) — For the Respondent

Date of Hearing: 18/06/2019
Date of Decision:02/07/2019

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20526-20527 /2019

Per : S.S GARG

Appellants have filed these two appeals against the common impugned order dt. 26/02/2018 passed by the Commissioner of Customs(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellants and upheld the order-in-original. Since both the appeals arise from the same facts and there is a common show-cause notice as well as Order-in-Original and Order-in-Appeal, both the appeals are taken up together for discussion and disposal.

2. Briefly the facts of the present case are that on receipt of specific intelligence by DRI, Bangalore that the said passengers Shri Sudharshan Ashok Kumar and Shri Ismail Ibrahim, both Indian citizens holding passport bearing No.M6600978 and Z3168819 respectively, would be arriving into India at Kempegowda International Airport at Bangalore from Dubai (Indigo Airlines 6E 96) on 15/10/2015 and are likely to smuggle gold by way of concealment on person without declaring the same to the Customs authorities and without payment of duty. The DRI officers intercepted the appellants and found in their possession two gold bars of 0.995 purity totally weighing 2000.14 gms valued at Rs.53,88,377/- (at the market rate) concealed discreetly in their baggage. The said gold was undeclared and was attempted to be smuggled into India by the appellants for commission. Once gold bar weighing 1 kg with markings 'Kaloti Dubai 1kg (1000.04 gms) GOLD 995 KJI MELTER ASSAYER kaloti Int'l DMCC" with serial No.A496983 was found concealed by Shri Sudharshan Ashok Kumar neatly wrapped in a white paper and kept in a grey plastic pouch in the deep green coloured hand bag with logo "wonder" carried by him. Similarly one gold bar weighing 1 kg with markings "ARG UAE 1 KILO (1000.10 gms) 995 GOLD ARG MELTER ASSAYER" with serial No.B05370 was concealed by Shri Ismail Ibrahim neatly wrapped in a brown paper cover and further wrapped in white paper and kept in white red plastic cover in the black coloured laptop bag with logo "Minerva" carried by him. The said gold bars were undeclared and were attempted to be smuggled into India by the appellants for their unjust and illicit gain.

The impugned gold bars along with packing material were seized under Section 110 of Customs Act, 1962 (the Act for short), after being approved by approved gold appraiser / valuer, under a mahazar read with statements of both appellants all dt. 15/10/2015 wherein the appellants admitted the guilt and factum of concealment. A show-cause notice dt. 12/04/2016 was issued to both the appellants proposing to confiscate the seized bold bars and further to impose penalty under Sections 112 and 114AA of the Act. After following due process, the original authority vide Order-in-Original dt. 27/12/2016 absolutely confiscated the gold bars totally valued at Rs.53,89,377/- under Sections 111(d), 111(i), 111(l), 111(m) and 119 of the Act and also imposed penalties of Rs.8 lakhs under Section 112(a) and Rs.5 lakhs under Section 114AA of the Act on both the appellants. aggrieved by the said order, appellants filed appeals before the Commissioner(Appeals) who rejected the appeals. hence the present appeals.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellants submitted that the impugned order is contrary to the facts and the law and the binding judicial precedents. He further submitted that both the authorities have based their findings on retracted statements of the appellants without any corroboration and secondly both the lower authorities have not followed the settled authoritative judicial pronouncements that the show-cause notice is required to be given to the person within six months from the date of seizure of the goods in terms of Section 110(2) of the Act or otherwise the goods ought to be released unconditionally to the person from whose possession it was seized. As far as the first ground is concerned, the learned counsel submitted that the narration of the proceedings in the Mahazar dt. 15/10/2016 and the depositions as recorded in the statements dt. 15/10/2015 and 07/01/2016 of the appellants are factually incorrect. The appellants after release on bail, not knowing the content of the documents to which their signatures were obtained, retracted the statement recorded by the Customs officers on 15/10/2015 by executing sworn affidavits on 27/10/2015. He further submitted that in the impugned order, the Commissioner(Appeals) has not taken into consideration the facts stated in the grounds of appeal and deposed in the affidavits executed on 27/10/2015 soon after release from custody. He further submitted that it is a settled law that retracted statements cannot be relied upon without corroboration of material particulars by independent evidence. for this submission, he relied upon the following decisions:-

i. Vinod solanki Vs. UOI [2009(233) ELT 157 (SC)]
ii. Pascoal Dias Vs. ACC, Goad [2003(157) ELT 132 (Bom.)] Affirmed by the Hon'ble Supreme Court [2011(268) ELT 433 (SC)]
iii. KI Pavunny Vs. Asst. Collector of Central Excise [1997(90) ELT 241 (SC)]
iv. Mohtesham Mohd Ismail Vs. Spl Director, ED [2007(220) ELT 3 (SC)]
v. Commissioner Vs. Fact Paper Mill Ltd. [2015(322) ELT 283 (Guj.)]

4.2. On the second ground of appeal, the learned counsel submitted that the officers of Customs seized one gold bar with marking "Kaloti Dubai 1kg GOLD 995 serial No.A496983 weighing 1000.04 gms found in the hand bag of Shri Sudharshan Ashok Kumar and one gold bar with markings "ARG UAE 1 KILO 995 GOLD ARG MELTER ASSAYER" with serial No.B05370 found in the hand bag of Shri Ismail Ibrahim under Mahazar dt. 15/10/2015. But the show-cause notice was received by Shri Sudarshan Ashok Kumar on 18/04/2016 and the proof of receipt of the show-cause notice is placed on record and the same has not been disputed by the lower authority and the Department. He further submitted that in the present case, the goods were seized on 15/10/2015 and the period of six months as per Section 110(2) of the Act expired on 14/04/2016 but the show-cause notice was admittedly received by the appellant on 18/04/2016 which is beyond the period of six months from the date of seizure of the impugned goods. He further submitted that the Department has not adhered to the time limit as prescribed under Section 110(2) of the Act and therefore the impugned order is void and not sustainable and consequently the goods seized are required to be returned to the appellants unconditionally. He further submitted that the Commissioner(Appeals) has however relied upon Section 153(a) and CBEC General Circular no.52/2004 dt. 06/08/2004 and has held that mere dispatch of the show-cause notice within six months from the date of seizure would be sufficient compliance of law as provided in Section 110(2) of the Act. To counter this finding, the learned counsel submitted that it is well settled law that mere issuance or dispatch of the notice to the appellant would not amount to 'giving' of the show-cause notice as stipulated both in ordinarily sense as also in law as statutorily prescribed in Section 110(2) and Section 124(a) of the Act. He further submitted that Section 153 of the Act has prescribed the general mode of service of orders, decision, any summons, notice, etc. The mode of dispatch does not state that the same amounts to giving of notice as stipulated in Section 110(2) and Section 124(a) of the Act. He also submitted that the decision of the Hon'ble Madras High Court in the case of Sha Moolchand Praopchandji Gandhi Vs. CC, Chennai [2004(163) ELT 20 (Mad.)] relied upon by the Commissioner(Appeals) is a decision by a Single Judge dt. 10/11/2003 and mainly proceeds in accordance with Section 153 and not an interpretation of the language used in Section 110(2) of the Act. Learned counsel relied upon the decision of the Delhi High Court in the case of Purshottam Jajodia, Amit Kumar, KM Udyog Vs. DRI, New Delhi [2014(307) ELT 837 (Del.)] where the Hon'ble High Court has examined and interpreted the language used in Section 110(2) to conclude that the show-cause notice must be 'given' to the person before expiry of six months from the date of seizure of goods. He particularly referred to para 13 of the judgment, which is reproduced below:-

> ***13.*** *The key words, according to us, are - 'informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty'. The object of Section 124(a) is that the person concerned had to be informed of the grounds on which the confiscation of the goods is to be*

> *founded. This can only happen when the person from whom the goods have been seized, receives the notice and is capable of reading and understanding the grounds of the proposed confiscation. Therefore, according to us, upon a conjoint reading of Section 110(2) and Section 124(a) of the said Act, the notice contemplated in these provisions can only be regarded as having been "given" when it is actually received or deemed to be received by the person from whom the goods have been seized. The whole object of giving the notice under Section 124(a) of the said Act is to inform the person concerned of the grounds of the proposed confiscation or proposed imposition of penalty as also to give him an opportunity to make a representation in writing so that an order confiscating or not confiscating the goods may be passed.*

4.3. He also referred to the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of IJ Rao, Asst. Collector of Customs Vs. Bibhuti Bhusan Bagh [1989(42) ELT 338 (SC)] while interpreting the provisions of Section 110(2) of the Act, has held as under:-

> ***9.*** *It is apparent that goods liable to confiscation may be seized by virtue of Section 110(1) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The proviso to Section 110(2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf.*

4.4. He further submitted that the CBEC circular dt. 06/08/2004 relied upon by the Commissioner(Appeals) is contrary to the judgment of the Apex Court and the High Court of Delhi as per the settled law, the circulars contrary to the statutory provisions as interpreted by the courts have no existence and the interpretation of the statutory provisions is the prerogative of the courts. He also relied upon the following judgments to buttress his argument that in the present case, the show-cause notice is beyond the period of six months as stipulated in Section 110(2) of the Act.

i. Alka Watches Vs. UOI & others [1983(14) ELT 2116 (All.)]
ii. Premnath Khanna Vs. CCE, Allahabad [1987(29) ELT 9 (All.)] Approved by Supreme court [1999(108) ELT A123 (SC)]
iii. Iqbal Hussain Vs. UOI [2017(351) ELT 145 (Del.)]

iv. CC Vs. Jayanth Oil Mills [1989(41) ELT 111 (Tri.)]
v. Overseas Pain Linkers Vs. UOI [2001(127) ELT 42 (All.)]

4.5. He also submitted that penalties imposed on both the appellants under Section 112 to the tune of Rs.8 lakhs and further penalty of Rs.5 lakhs under Section 114AA are not sustainable because the requirements of Section 111 have not been complied with. He also relied upon the decision of Tribunal in the case of Rakheeb Ulla Baig Vs. CC, Bangalore [Final Order No.20300/2019 dt. 29/03/2019].

5. On the other hand, the learned AR defended the impugned order and submitted that the Department has issued the show-cause notice as prescribed in Section 110(2) of the Act within a period of six months and as per the requirement of Section 153, the only requirement is to send the notice within a period of six months. He further submitted that this issue has been considered by the Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman vs. Addl. Commissioner of Customs, Bengaluru [2015(330) ELT 148 (Kar.)] wherein the Hon'ble High Court has considered various decisions of the High Courts as well as the provisions of Section 110(2) and Section 124 of the customs Act. He further submitted that the Karnataka High Court has also considered the decision of Delhi High Court in the case of Purushottam Jajodia Vs. DRI [2014(307) ELT 837 (Del.)]. She further submitted that Hon'ble High Court of Kerala, which is the jurisdictional High Court, has also considered the issue in the case of Ambali Karthikeyan Vs. Collector of Customs & Central Excise [2000(125) ELt 50 (Ker.)]. She further submitted that both the jurisdictional High Courts have held categorically that if the notice has been sent by registered post within six months time, then the date of receipt is immaterial. She further submitted that the decision of the Delhi High Court in the case of Purushottam Jajodia cited supra which is heavily relied upon by the appellant has been stayed by the Hon'ble Apex Court by virtue of an order dt. 11/09/2014 in SLP (C) No.24478/2014 and the stay order is continuing and this fact has been recorded by the Delhi High Court in the case of Pankaj Lakhani Vs. CC

(Preventive) [2017(346) ELT 381 (Del.)]. She further submitted that the decision of the Apex Court which has been relied upon by the appellant is not applicable to the facts of the present case because the Apex Court did not consider the relevant Section 153 of the Customs Act and only interpreted Section 110(2) of the Customs Act. Learned AR further submitted that the appellant in the mahazar as well as in the statement recorded has categorically confessed their offence/guilt and has never retracted. She further submitted that so-called retraction by affidavit has not been filed before both the authorities and therefore it is not a valid retraction and further after the alleged retraction dt. 27/10/2015, the appellants have made statements subsequently on 07/01/2016 and in those statements also, there is no reference to the retraction at all and only in the statement dt… 27/10/2015. they have retracted their earlier statements made on 15/10/2015. Therefore as per the learned AR, decisions relied upon by the appellant regarding the retraction is not applicable in the present case because no such retraction had happened.

6.1. After considering the submissions of both the parties and perusal of the material on record, I find that as per the Mahazar and the Statements of the appellants, they have confessed their guilty. As far as their retraction by executing sworn affidavits dt. 27/10/2015, this affidavit has not been filed before the lower authorities including the Commissioner(Appeals). Further I find that the alleged affidavit and statements record on 07/01/2016 wherein also the appellants did not state that they retract their statements recorded on 15/10/2015. In view of these facts, I hold that appellants have confessed their guilty by specifically confessing the same in their statement and the Mahazar proceedings both dt. 15/102015. Further I find that the allegation of the appellant that there is a violation of Section 110(2) as the notice of seizure has not been given to the appellants within the period of six months as stipulated in the said provisions. I find that Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman cited supra has considered the provisions of Section 110(2) as well as Section 153 and has also considered various judgments of the other High courts including the High Court of Delhi in the case of Purushottam Jajodia which has been heavily relied upon by the appellant. After considering the provisions of the Act and various decisions, Hon'ble High Court in para 14 to 22 has held as under:-

> ***14.*** *It would be apt at this juncture itself to refer to the decisions relied upon by the learned counsel appearing for the petitioner namely in the case of Purushottam Jajodia v. Dir. of Revenue Intelligence, New Delhi reported in 2014 (307) E.L.T. 837 (Delhi) whereunder the interpretation of the words contained in sub-section (2) of Section 110 and Section 124(a) of the Act came to he considered. It has been held that mere dispatch of notice would not amount to "giving" of notice and the word "giving" as found in sub-section (2) of Section 110 of the Act would be complete only when such notice has reached the person concerned or if such notice after being tendered had been refused. The said judgment of the Delhi High Court is undisputedly pending adjudication before the Hon'ble Apex Court in Civil Appeal No. 3122/15.*
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> ***15.*** *A perusal of the said judgment would indicate that judgment rendered by the Hon'ble High Court of Madhya Pradesh in the matter of Commissioner v. Ram Kumar Aggarwal reported in 2012 (280) E.L.T. 13 (M.P.) has been distinguished. The High Court of Madhya Pradesh in Ram Kumar Aggarwal's case while interpreting Sections 110(2) and 124 of the Act has held issuance of show cause notice by registered post before the expiry of six (6) months from the date of seizure would be sufficient compliance more particularly when the same is received by the addressee though after lapse of six (6) months. It has been further held that neither Section 110(2) nor clause (a) of Section 124 of the Act contemplates service of notice in strict sense should be within a period of six months. It is submitted that judgment rendered by the High Court of Madhya Pradesh has since been affirmed by the Hon'ble Apex Court in Special Leave Petition (Civil) No. 28186/2011 by judgment dated 21-10-2011. Thus, judgment rendered by the Madhya Pradesh High Court in Ram Kumar's case has reached finality and in the judgment rendered by the Delhi High Court appeal is yet to be disposed of by the Hon'ble Apex Court. Hence, this Court is of the considered view that judgment rendered by the High Court of Madhya Pradesh in Ramkumar's case referred to supra is more persuasive than the judgment rendered by the Delhi High Court and as such contention raised by learned counsel for petitioner to consider the case of Purshottam Jajodia rendered by Delhi High Court cannot be accepted.*
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> ***16.*** *Show cause notice dated 13-3-2014 - Annexure-A issued to the petitioner in the instant case and its confirmation dated 5-6-2014 - Annexure-F issued by third respondent would clearly indicate that show cause notice-Annexure-A came to be issued within a period of six months from the date of seizure of goods as contemplated under Section 110(2) of the Customs Act.*
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> ***17.*** *Section 110(2) indicates where goods are seized under Section 110(1) and no notice in respect thereof is given under Section 124(a) within six (6) months of the seizure, such goods are to be returned under*

Section 124(a) of the Act. No confiscation of goods imposition of penalty can be passed or levied without issuance of notice in writing unless waived by person concerned. In the instant case goods came to be confiscated by the proper officer on 16-9-2013. Show cause notice came to be issued on 13-3-2014 i.e., before expiry of six months period prescribed i.e., before 15-3-2014. Postal cover under which show cause notice-Annexure-A was dispatched has been produced along with writ petition at Annexure-B and same would disclose it has been dispatched by the Office of DRI, Palarivattom, Kochi on 13-3-2014 itself and petitioner is undisputedly a resident of Kerala State and said postal cover also bears the postal seal dated 15-3-2014. Thus, petitioner cannot be heard to contend that postal article containing show cause notice-Annexure-A was actually delivered to him only on 17-3-2014 and six (6) months time limit prescribed under Section 110(2) of the Act had lapsed by the time show cause notice was delivered and therefore he would be entitled to return of seized goods.

18. *Section 153 of the Act provides that notice issued under the Act should be served in the manner as provided under said Section. It does not even remotely suggest that such person should be served with such notice to hold service of notice as complete. Dispatching of notice by registered post would constitute a valid service. Clause (b) of Section 153 of the Act also provides that in case tendering of summons or sending the notice by registered post is not feasible or possible, then such service can also be effected by affixing the notice on the notice board. Thus, Section 153 controls Section 110(2). Thus, date of sending or dispatching the notice by registered post is the date of giving the notice as contemplated under Section 110(2) of the Act.*

19. *Though Delhi High Court was persuaded by the dicta laid down by the Apex Court in the case of Jayanthi for construing the plain and simple meaning of the word "given" to extend the said meaning to sub-section (2) of Section 110, the High Court of Madhya Pradesh has taken note of the fact that Hon'ble Apex Court was not construing the word "given" as used in Customs Act, 1962 and found that Hon'ble Apex Court was dealing with giving of notice of a meeting as provided for under Section 27(3) of the Mysore Town Municipality Act, 1951 and found that said provision was not controlled by any other provision in the Act. This reasoning adopted by the Madhya Pradesh High Court is more persuasive inasmuch as the word used "given" in sub-section (2) of Section 110 of the Customs Act, 1962 has to be read harmoniously or conjointly with the words found in Section 153 of the Act which provides or enables the authorities to effect service of order, decision and notice to be issued under the Act by tendering it through registered post or by affixture where it is not possible or feasible to be served in the manner provided in clause (a) of Section 153 i.e., by affixing it on the notice board of the customs house.*

20. *Thus, a conspectus reading of Section 153 of the Act would clearly indicate that it does not contain the word "given" as found in Section 110(2) or 124 of the Act. It is well settled proposition of law that true meaning of the words and expressions used by the Legislature must be given effect to and Courts must have regard to the aim, object and scope of the object to he achieved while interpreting the words used in a statute.*

21. *The Select Committee while recommending repeal of Sea Customs Act, 1878 and for introducing the Customs Act, 1962 in their report have observed to the following effect :*

"The Committee are of the view that if any goods are seized proceedings

in the nature of Show Cause Notice should be started within six months of the seizure but this period may be on sufficient cause being shown to be extended by the Collector for Customs for a further period of six months. If Show Cause Notice is not issued within a specified period, the goods should be returned to the person from whom they were seized. The Committee also feels that in order to ...in himself or inconvenience to a person from whom the documents are seized, he should be entitled to make copies thereof or take extracts therefrom."

22. *Keeping this report in mind, the Legislature while enacting sub-section (2) of Section 110 in the 1962 Act has consciously used the word "given". It has been opined in the report that proceedings "should be started" in six (6) months. Hence, word "given" used in Sections 110(2), 124 and Section 153 should be read conjointly. The object in setting the time limit under Section 110(2) of the Act was not to harass the citizen from whom goods have been seized and keep the kettle boiling, but to ensure that proceedings are commenced or started within six (6) months from date of such confiscation.*

6.2. Further I find that the jurisdictional High Court of Kerala in the case of Ambali Karthikeyan has examined Section 110(2) and Section 153 of the Customs Act and held in para 2 as under:-

2.*There is no dispute that Ext. P-1 was despatched on 4-2-1970. On the question whether there was an extension of time as stated in Ext. P-8 and the circumstances under which it was extended the first respondent states as follows in paragraph 5 of his counter- affidavit:*

"It is submitted that the then Collector Shri M. C. Das signed the draft of Ext. P-1 on 12-1-1970. Ext. P-1 is also dated the same day. It was actually despatched from the first respondent's office on 4-2-1970. The delay in the despatch of Ext. P-1 was brought to the notice of the then Collector on 2-2-1970 and he extended the time for issue of notice by one month on the same date in exercise of the power vested in him by the proviso to Clause (2) of Section 110 of the Customs Act, 1962."

The correctness of the above statement is not disputed. The counsel for the petitioner rightly submitted his arguments only on the basis of sub-sec. (2) of Section 110. It reads:

"110. (1) x x x

(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 on 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.

(3) x x x

(4) x x x"

He first contended that the period of six months mentioned in the above provision should be reckoned from the date of seizure of the goods to the date of receipt of notice by him under Section 124 (a) and not to the date of despatch of the notice. He submitted that the use of the word given in sub-section (2) shows that the notice must be actually served on the person, and that it was not sufficient that the notice was despatched. The question has to be decided on first impressions as it does not appear to have been covered by any decision. Section 124 (a) deals with issue of show cause notice before confiscation of the goods etc.; and that section also states that the owner of the goods or the person on whom the penalty is proposed to be imposed shall be given notice in writing. That by itself does not give any indication whether the relevant date is the date of issue of the notice or the date of receipt of the notice of the person concerned.

Section 153 of the Act deals with service of order, decision etc. and it reads:—

***"153. Service or 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 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 of the customs house."

The above provision shows that a notice issued under the Act can be served by sending it by registered post to the person for whom it is intended or to his agent, and that if it cannot be served in that manner it can be served by affixing on the notice board of the Customs Office. It gives an indication that in giving notice under the Act receipt of the same by the person concerned is not relevant; but what is relevant is issuing of the notice in any one of the manners provided in that section. In this view of the matter, it follows that the show cause notice in this case has been given to the petitioner under Section 110 of the Act within the prescribed period of 6 months, as it has been admittedly sent by registered post within that time.

6.3. In view of the decisions of the jurisdictional High Courts of Kerala and Karnataka cited supra which is binding on this Tribunal and by following the ratio of the said decision, I am of the considered view that there is no infirmity in the impugned order as far as absolute confiscation of the goods are concerned and there is no violation of the provisions of Section 110(2) read with Section 153 of the Customs Act. As far as imposition of penalty of Rs.8 lakhs under Section 112 and further penalty of Rs.5 lakhs under Section 114AA of the Customs Act, 1962 is concerned, I feel that the imposition of penalty of Rs.8 lakhs is on the higher side and therefore I reduce the penalty to Rs.1 lakh

(Rupees one lakh only) on each of the appellant. Further penalty under Section 114AA of the Customs Act is concerned, I find that the penalty under Section 114AA can only be imposed if the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Further I find that in the present case, the appellants have not made intentionally any false sign or declaration, incorrect statements or declarations to attract penalty under Section 114AA of the Act. Therefore I set aside the penalty imposed under Section 114AA of the Customs Act, 1962 on both the appellants.

7. In the result, the appeals are partly allowed. Confiscation of the gold bar is upheld. Penalty under Section 112(a) is reduced and the penalty under Section 114AA are dropped.

(Order was pronounced
in Open Court on **02/07/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...