

BOMBAY HIGH COURT

Mohanlal Devdanbhai Choksey

Vs

M.P. Mondkar

(R Kantawala, C.J. V Tulzapurkar, J.)

02.03.1976

JUDGMENT

Kantawala, C.J.

1. The firm of Messrs Mohanlal Devdanbhai Choksey (Petitioner No. 1) consisting of three partners, petitioners Nos. 2 to 4 carries on business of sale and purchase of gold and silver bullion. On January 10, 1969 the petitioners delivered to the proper officer under the Customs Act, 1962 (hereinafter referred to as "the Act") an intimation under Section 11J of the Act in respect of their shop at Sheikh Memon Street as being the place where the silver and gold bullion which were the goods notified under Section 11-I of the Act are being kept or stored by them. According to them between 14th and 23rd January 1969 they sold and delivered three consignments of silver bullion to a firm carrying on business at Nasik. On January 23, 1969 they effected sale of 22 bars of silver weighing in the aggregate 666.533 kgs. valued at Rs. 3,70,356/- to the said firm at Nasik. On the same day they obtained from the Competent Officer a transport voucher under Section 11K for transport of the said goods by road from Bombay to Nasik. In the said transport voucher it was mentioned that the goods would leave the petitioners shop at Sheikh Memon Street at 6 p.m. On January 23, 1969. Such time was mentioned in the transport voucher according to the petitioners because the Excise Officer declined to sign a transport voucher on that day if the goods were to be transported the next day as intended by the petitioners. On January 23, 1969 at about 7.30 p.m. a party of Customs Officers raided the garage and residence of the petitioners Nos. 2, 3 and 4 at building "Triveni" situate at Walkeshwar Road, Bombay and seized 22 bars of silver from that garage along with 11 small pieces of silver contained in a gunny bag which was found on the loft. The Customs officers also seized a Willy's Station Wagon bearing No. MRW-9690 and some old books of account. They also seized from the residence of petitioners Nos. 2, 3 and 4 in building Triveni currency notes of the value of Rs. 54,000/- and 7 gold coins and some cash. On January 24, 1969 from the shop of the petitioners at Sheikh Memon Street books of account documents and other things were taken charge of. On July 22, 1969 the Collector of Central Excise and Customs, Bombay passed an order to the effect that he was satisfied that there were sufficient grounds for extending the period by six months for the issue of notice prescribed under Section 124 of the Act and accordingly, in exercise of the powers conferred by Section 110(2) of the Act he extended the period for issue of the notice by six months from July 23, 1969. On January 22, 1970 the Assistant Collector, Directorate of Revenue Intelligence, Bombay unit issued a show cause notice to the petitioners calling upon

them to show cause why the silver bullion which was seized should not be confiscated and they should not be held liable for imposition of the penalty under Chapter XIV of the Act. By the said notice the petitioners were also called upon to show cause why the Willy's Station Wagon bearing No. MRW-9690 and the 'Context-30' calculating machine that were seized should not be confiscated. On February 20, 1970 the petitioners filed a petition under Article 226 of the Constitution on the Original side of the High Court inter alia to challenge the validity of the order of extension dated July 22, 1969 and the show cause notice dated January 22, 1970. They prayed for a writ of mandamus or other appropriate relief directing the respondents, their officers, servants, and agents to return to them forthwith all the goods seized, currency notes of Rs. 72,278/- 7 gold coins, 'Context-30' calculating machine, Willy's station wagon bearing No. MRW-9690 and the books of account and other documents seized by them and to withdraw and cancel the order of extension dated July 22, 1969 and the said show cause notice dated January 22, 1970. In this petition the Assistant Collector, Directorate of Revenue Intelligence, Bombay Unit, the Collector of Central Excise, and the Collector, Directorate of Revenue intelligence, Bombay Unit and the Union of India were made party respondents. The petition was resisted by the respondents and affidavits in reply were filed by the Assistant Collector Directorate of Revenue Intelligence and the Superintendent of Central Excise and Customs.

2. When the petition came up for hearing before the learned trial Judge two contentions were urged on behalf of the petitioners. Firstly it was contended that the order dated July 22, 1969 whereby the period for issue of a show cause notice under Section 124 of the Act was extended, was in breach and violation of the principles of natural justice as the said order was issued by the Officer without giving an opportunity whatsoever to the petitioners. Secondly, it was contended that even the seizure of the goods was unjustified, because, on the facts of the case it was impossible for any officer to entertain any reason to believe that the goods were seized were liable to confiscation within the terms of Section 110(1) of the Act so as to justify the seizure. On that ground the validity of the show cause notice dated January 22, 1970 issued under Section 124 of the Act was challenged. The learned judge following the decision of the Supreme Court in *the Assistant Collector of Customs and Superintendent. Preventive Service Customs, Calcutta and others v. Charan Das Malhotra*, took the view that as the order extending the time for issuing the show cause notice under Section 124 was passed without giving any opportunity to the petitioners of being heard, the said order was liable to be quashed. So far as the validity of the show cause notice dated January 22, 1970 was concerned, he took the view that the attempt on the part of the petitioners to show that the Customs authorities would have had no reason to believe that goods in question were liable to confiscation was an ill-advised and ill-founded attempt and he had no hesitation in rejecting the said contention. In view of these findings having regard to the provisions of Section 110 of the Act he issued a writ of mandamus against the respondents directing them to return to the petitioners forthwith the 22 bars of silver, 11 small pieces of silver, Willy's station wagon bearing No. MRW-9690, books of account and other documents seized from the garage and 25 pieces of silver, 'Contex-30' calculating machine, books of account and other documents seized from the petitioner shop. By his order he also

directed the respondents to withdrawn and cancel the order of extension of time dated July 22, 1969. While this petition was pending criminal proceedings were also adopted by the Officers of the Customs Department in the Court of the learned Presidency Magistrate and in view of the pendency of the said proceedings he directed that the property which was directed to be returned should not be returned to the petitioners in compliance with the judgment till two weeks from the date of delivery of the judgment so as to give the respondents an opportunity to apply for an order under Section 516A of the Code of Criminal Procedure to the learned Magistrate before whom the criminal proceedings were pending. It is against this order passed by the learned Judge that those two cross appeals are filed. Appeal No. 81 of 1972 is filed by the petitioners while cross appeal No. 84 of 1972 is filed by the original respondents.

3. Mr. Sen the learned counsel on behalf of the petitioners contended that having regard to the provisions of the Act seizure under Section 110 was sine qua non to exercise of the powers of confiscation under Section 124 of the Act. He submitted that a notice under Section 124 of the Act cannot be issued unless there is valid seizure of the goods under Section 110, that such valid seizure is a fetter upon the power of the authorities to issue a show cause notice under Section 124 and that a notice under Section 124 of the Act is a condition precedent to exercise of the powers of confiscation of the goods. He submitted that the impugned show cause notice dated January 22, 1970 in so far as it relates to confiscation of the goods must be quashed once the six months' period prescribed in Section 110 expires and no show cause notice is issued within that period and when no valid order of extension issued within that period and when no valid order of extension of the period of seizure or for issue of the show causes notice is passed by the appropriate authorities. According to his submission, a show cause notice under Section 124 cannot be given once the period of six months or the extended period mentioned in the proviso has elapse since the date of the seizure. His submission was that as under the order of the trial Court the goods are ordered to be returned to the petitioners, the proceedings initiated pursuant to the notice dated January 22, 1970 under Section 124 of the Act cannot be continued and they should be quashed. On the other hand, Mr. Joshi on behalf of the original respondents contended that Section 110 and Section 124 are entirely independent provisions, that Section 110 is contained Chapter XII which deals with searches, seizure and arrest. He submitted that these provisions constitute the machinery to facilitate proper investigation of a case and anything contained in a provision contained in a section in Chapter XIII cannot effect or impose a fetter upon the powers conferred in the substantive provisions which are contained in Chapter XIV of the Act. Chapter XIV of the Act according to his submission contains substantive provisions from confiscation of goods and conveyances and imposition of penalties. Section 124 is contained in Chapter XIV and it makes the issue of a show cause notice a condition precedent before any order confiscating any goods or imposing any penalty on any person can be passed

under this Chapter. He submitted that the provisions of Section 124 are independent provisions and thereby no limitation as to time is prescribed for the issue of such a show cause notice, not do they contain any provision to the effect that an order of confiscation cannot be passed or proceedings for such confiscation cannot be instituted unless they were first seized and contained. He also submitted that for initiation of proceedings under Section 124 no limitation or restriction as regard time is imposed and Section 110 contained in Chapter XIII and Section 124 contained in Chapter XIV should be considered in their proper perspective and nothing contained in Section 110 can be regarded or considered as a fetter upon the exercise of powers under Section 124. He urged that the consequences of non-compliance with the principles of natural justice while passing an order of extension under Section 110 are provided in the section itself and it would not be permissible to the Court to enlarge the scope of Section 110 beyond what is contained therein.

4. So far as the cross appeal preferred by the original respondents is concerned, he submitted that the order of the learned judge directing return of the books of account and documents to the petitioners should be modified as some of the said books of account and documents have been tendered as exhibits in the original proceedings pending before the learned Magistrate and some of them are likely to be tendered as exhibits in the proceedings initiated for confiscation of the goods and imposition of personal penalty against the petitioners. He, therefore, submitted that having regard to the subsequent skents this order qua return of books of account and documents should be modified. So far as the return of silver bullion is concerned, he drew our attention to the events that have place after the matter was disposed of by the learned Judge and submitted that in view of the subsequent events that have taken place the order passed by the learned Judge should be modified in any event a clarification should be made so that the original respondents may not be hauled up for contempt in case, or in view of the order that may be passed by the learned Magistrate or in view of the order of confiscation that may be passed by the authorities under the Act, it may not be possible for any of the original respondents to return the silver bullion, the Willy's station wagon and/or the 'Contex-30' calculating machine to the petitioners.

5. By Central Ordinance No. 1 of 1969 which was promulgated on January 3, 1969, Chapters IVA and IVB were added in the Act and the said provisions were continued later on by Act 12 of 1969. These Chapters IVA and IVB have been introduced in the Act with effect from Jan. 3, 1969, Section 11-A, authorises the Central Government by notification to specify goods of any particular class or description in regard to which special measures may be deemed necessary for checking its illegal export. It is common ground that under the said section Central Government has specified silver bullion and coins as being such goods. Under Section 11J it is obligatory upon any person who possessed goods as specified by the Central Government to intimate

particulars of the place where goods were kept or stored by him. Sections 11K, 11L and 11M, regulate the transport thereof. Chapter XIII of the Act contains provisions relating to searches, seizure and arrest. of the Act contains provisions relating to searches, seizure and arrest. Section 110 in this Chapter deals with seizure of goods, documents and things and its provisions are as under :-

"110. (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 seize any such goods, the proper officer may serve on the owner of the goods in order that he shall not remove part with or otherwise, deal with the goods except with the previous permission of such officer.

(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 Collector of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which in his 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 extract therefrom in the presence of an officer of customs."

6. Chapter XIV of the Act contains provisions relating to confiscation of goods and conveyance and imposition of penalties. Section 111 enumerates the types of goods which are liable to confiscation. After the Ordinance No. 1 of 1969 was promulgated clause (P) was added in Section 111 whereby one of the types of goods that are liable to confiscation was added as under :-

"(P) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened."

Section 112 provides for imposition of personal penalty. Section 113 enumerates the types of goods liable to confiscation. By Ordinance No. 1 of 1969 which was continued by Act 12 of 1969 Clause (1) was introduced in this section and one of the types of goods which could be

confiscated under this clause was any specified goods in relation to which any provisions of Chapter IVB or of any rule made under the Act for carrying out the purposes of that Chapter have been contravened. Section 124 provides for issue of show cause notice before confiscation of goods etc. and its provisions are as under :-

"124. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person.

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given 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".

Section 126 provides that when any goods are confiscated under the Act, such goods thereupon rest in the Central Government and the officer adjudging confiscation shall take and hold possession of the confiscated goods.

7. The proviso to sub-section (2) of Section 110 empowers the Collector of Customs, on sufficient cause being shown to extend the period of six months mentioned in the main provisions of that sub-section by a further period not exceeding six months. In the present case such an order of extension was passed on July 22, 1969 and it is common ground that the said order of extension was passed by the Collector of Central Excise without giving any opportunity to any of the petitioners to show cause why the period specified therein should not be extended. In the case *Asstt. Collector of Customs V. Malhotra* the Supreme Court has taken the view that the power under Section 110(2) is quasi-judicial and that at any rate one requiring a judicial approach. While power of seizure under Section 110(1) can be exercised on the basis of reasonable belief on the part of the concerned officer the power of extending (extending) the period to give notice under Section 124(a) is to be exercised only on "sufficient cause being shown". This expression envisages at least some sort of inquiry on facts placed before the authority and determination by him of those facts. Extension order is not to be passed mechanically. The power under sub-section (1) cannot be equated with the power under the proviso to sub-section (2) of Section 110. The Supreme Court accordingly took the view that the Collector could not extend

the period for giving notice of confiscation under Section 124(a) without giving an opportunity of hearing to the person whose articles are seized. In view of this decision of the Supreme Court the order of the learned Judge quashing the order of the Collector Central Excise dated July 22, 1969 extending the period for issue of the notice under Section 124 by six months from July 23, 1969 is not challenged, because the said order is passed in view of the decision of the Supreme Court in Malhotra's case.

8. Before the learned Judge the validity of the show cause notice issued under Section 124(a) was challenged on the ground that the Competent Officer concerned could not have reason to believe that the goods seized were liable to confiscation. In view of the circumstances enumerated by him, in his judgment that contention has not been canvassed before us. However, it is urged by Mr. Sen before us that upon a proper interpretation of Section 110 seizure of the goods which are liable to confiscation is a condition precedent to initiation of any proceedings for confiscation thereof and if such goods are not either validly seized or are not continued under seizure before issue of a show cause notice under Section 124, then it is not open to the Authority to initiate proceedings by giving a show cause notice under Section 124(a). He strongly relied upon the provisions of sub-section (2) of Section 110 and submitted that it is implicit in the provisions of the said section that a show cause notice under clause (a) of Section 124 cannot be issued after the expire of the period of six months from the date of seizure if there is no extension, or, after the expiry of the further period of six months if there is an extension as contemplated by the proviso to sub-section (2), particularly when the goods are required to be returned to the person from whose possession they were seized. The effect of section 110 has to be judged in the light of the provisions of Chapter XIII in which this section exists. Chapter XIII deals with machinery for searches, seizure and arrest with a view to facilitate investigation. Sub-section (2) of Section 110 only provides for the consequence that will follow in case goods are seized as contemplated by sub-section (2) thereof and no notice in respect thereof is given under clause (a) of Section 124 within specified period of six months or within the extended period contained in the proviso. He emphasised the words of the proviso to sub-section (2) of Section 110 to the effect 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. His submission was that the expression "the aforesaid period of six months" related to the period prescribed for issue of a notice under clause (a) of Section 124. Thus the provisions of sub-section (2) according to his submission are a fetter or limitation upon the exercise of the powers conferred by section 124 for initiation of proceedings for confiscation of goods or imposition of personal penalty. He also emphasised that even though in sub-section (1) of Section 110 the word "may" is used in the expression "he may seize such goods", it should be interpreted as "shall" and seizure is compulsory before any order of confiscation can be passed. He also referred to the provisions of

Section 126 which provides inter alia that the officer adjudging confiscation shall take and hold possession of the confiscated goods. According to his submission taking and holding of possession of the confiscated goods anticipate that they are in the custody of the Authority as a result of initial seizure and the provisions of Section 110 have to be construed and given effect to in the light of the Chapter in which they are contained. It should not be overlooked that the object underlying Section 110 is not initiation of proceedings for confiscation of goods or for imposition of personal penalty, but is to indicate that will happen if such initiation has not taken place within the time prescribed by the section itself. The consequences of non-initiation of proceedings within the prescribed time are set out in the section and they are that the goods shall be returned to the person from whose possession they were seized. All the provisions of Chapter XIII are steps to facilitate investigation machinery and failure to issue a show cause notice under clause (a) of section 124 within the prescribed time will only result in an obligation on the part of the Customs Authorities to return the goods to the person from whose possession they were seized. There is nothing in the language of Section 110 to indicate that a fetter or limitation is imposed upon the power of the Competent Authority to initiate proceedings under Section 124. On the other hand, Section 124 is contained in Chapter XIV which contains substantive provisions relating to confiscation of goods etc. and imposition of penalty. Under Section 124 issue of a imposition of personal penalty is mandatory, but the language of section 124 is clear and precise and no restriction or limitation or even a fetter is imposed as regards the time when proceedings may be initiated by issue of a show cause notice. Section 124 prescribes the conditions precedent which are to be fulfilled by the Authority before an order of confiscation of goods or an order imposing any penalty can be passed against any person. These conditions precedent are laid down in clauses (a), (b) and (c) of Section 124 and they are : The owner of the goods or such person who is liable for penalty is to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; secondly, such owner or person is to be given an opportunity for 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 thirdly, such owner or person is to be given a reasonable opportunity of being heard in the matter. None of the three conditions precedent even suggests that there is a limitation on the exercise of the power either as regards the time or existence of seizure. On a plain reading of Section 124 it will be open even to the Competent Officer to pass an order of confiscation of goods or imposing any penalty without seizing any goods or after returning the goods under the proviso to sub-section (2) of Section 110 for failure to initiate proceedings within the prescribed time. An investigation machinery cannot be equated with a limitation upon a substantive power contained in Section 124; more so, when the only consequence that follows for failure to give notice within the prescribed time is laid down in Section 110(2), namely return of goods to the person from whose possession they were seized.

Even if the provisions of Section 110 and 124 are to be harmoniously read, it will not be possible for us to imply such a fetter, restriction or limitation on the exercise of the powers conferred by Section 124.

9. Reliance was placed by Mr. Sen upon the decision of the Allahabad High Court in the case of Mohammad Hanif v. Collector of Customs and Central Excise, . In this case the facts are where the petitioner's goods were seized but no notice under Section 124 was served stating why the goods should not be confiscated on the petitioner's application claiming back the goods, a show cause notice was served on him without giving an opportunity of being heard, it was held that the statutory period of six months within which notice must be given could not be extended. There is not much discussion in this judgment. The learned Judge with respect has omitted to consider the scheme of Chapters XII and XIV of the Act. He has also omitted to take into account the consequences that will follow for failure to give a notice, which are indicated in Section 110(2) of the Act. Even there is no discussion as regards the unrestricted language used in Section 124. In the absence of proper discussion, with respect, it will not be possible for us to accept the view that has been taken by the learned Judge especially when it is inconsistent with the view that has been expressed by the Supreme Court by the other High Courts in various decisions.

10. The question was first considered by the Division Bench of the Calcutta High Court in Malhotra's case . In that case one of the prayers made before the court was for return of the goods seized. The Court hold that the notice under Section 124(a) not having been issued within six months and the extension having been illegally obtained exports the goods were liable to be returned. The notice under Section 124(a) was also independently challenged in that case and was set aside by that Court not on the ground that it was not issued within six months as prescribed by Section 110(2), but on a totally different ground, namely, that the notice was materially vague. The question as to what be the effect of non-issue of a notice under Section 124(a) within six months on the proceedings for confiscation and imposition of penalty, was especially considered by the Court. The Division Bench held :

"The next question is as to what is the effect of the second extension being invalidated. So far as section 110 is concerned, it deals not with the issue of notice but with the seizure of the "goods and the return thereof. In other words, if the provisions are not satisfied the goods seized have to be returned. Therefore, since the extension had not been properly granted the appellant is entitled to the return of the goods. That by itself may not invalidate the notice itself. For that purpose, we have to travel to the next point taken, namely, the nature of the notice which has been issued under Section 124 of the said Act."

Thus the Division Bench clearly took the view that an invalid extension of time for continuing

the goods under seizure does not by itself or automatically invalidate the notice issued under Section 124(a). The decision in Malhotra's case ultimately came up for consideration before the Supreme Court and the judgment of the Supreme Court is as pointed out above . In paragraph 5 of the judgment the Supreme Court specifically referred to the provisions of Section 110 and 124 of the Act and after referring to Section 124 observed : "the section (Section 124) does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice."

11. It was urged by Mr. Mehta on behalf of the petitioners that these are mere passing observations of the Supreme Court and cannot be even regarded as obiter dicta. We are unable to accept this contention. In paragraph 5 of the Supreme Court has considered the provisions of Section 110 and 124 of the Act and also the effect thereof. These observations, on the contrary, reaffirm the view that has been taken by the Division Bench, namely, that Section 124 does not lay down any period within which a notice to show cause is required to be given and that the period laid down in Section 110(2) has relation to the seizure of goods but has nothing to do with the validity of the notice under Section 124. Even if these observations are regarded as Passing observations, upon a proper interpretation of Section 110 as well as Section 124 we take the same view as has been taken by the Division Bench of the Calcutta High Court and which view is reaffirmed by the above observations of the Supreme Court.

12. The provisions of Sections 110 and section 124 had come up for consideration before the various High Courts where contentions similar to those urged by Mr. Sen were advanced. Reference can be made to the judgment of the Division Bench, of the Madras High Court in the case of Collector of Customs and Central Excise v. Amruthalakshmi reported in (1974) 2 Mad. Law Journal 88. In that case no notice under Section 124 was given within six months from the date of seizure of the goods effected under Section 110. The Division Bench of the Madras High Court has taken the view that there is no connection between the exercise of power of confiscation of goods and imposing of penalty and the provisions in Section 110 of the Act which required the officer to hand over the goods to the owner after the period specified, if no notice under Section 124(a) of the Act was given. Section 110 puts a limit to the power of seizure and retention of goods by the officer. When once action was taken under Section 124 before the expiry of the period in Section 110 he might continue to retain the goods but the failure to give notice under Section 110, did not in any way affect the power of the authorities to proceed with the proceedings for confiscating the goods or imposing any penalty. It is further pointed out that Sections 110 and 124 are entirely independent. Section 110 dealt with the right of the officer to retain the seized goods for a specific period and his duty to return them to the possession of the owner from whom they were seized unless action under Section 124 has been taken. Section 124

prescribed the procedure under which the goods could be confiscated and penalty could be imposed. All that Section 124 required was fulfilling the conditions specified in sub-clauses (a), and (b) and (c). It is further pointed out that there was no substance in the contention that if the notice under Section 110 was not in accordance with law, the authority under Section 124 would have no jurisdiction to proceed with the confiscation proceedings or with the imposition of penalty. The Division Bench took the view that the view taken by the trial Court that notice under Section 110(2) and notice under Section 124 of the Act should be given within six months from the date of seizure of the goods was not correct. It also held that the view that a vested right was created in favour of the owner of the goods when a show cause notice under Section 124 was not given within six months as provided for under Section 110(2) was also not correct.

13. The same is the view taken by the Division Bench of the Gujarat High Court in the case of J. K. Bardolia Mills v. M. L. Khunoor, Deputy Collector of Central Excise and Customs, reported in 1975 (16) Gujarat Law Reporter 119. It is reiterated that the provisions relating to the seizure of the goods and those relating to the confiscation of the goods or impositions of penalty stand on different footing. Section 124 of the Act does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) of the Act relates only to the seizure of the goods and not the validity of the notice. Once the order of confiscation of the goods is passed under the provisions of Section 111 of the Act the question of return of goods after the expiry of the period mentioned in Section 110 of the Act cannot survive. The Division Bench also pointed out that if the intention of legislature was to restrict confiscation of goods or imposition of penalty only in respect of the goods which are seized under Section 110 of the Act, the legislature would have used the languages qualifying the word "goods" used in Section 111, 112 and 124 of the Act. The words used in Sections 112 and 124 are "any goods" and "any person;". These words are of widest import and they cannot be given a restricted meaning as is sought to be given by the petitioner. There is nothing in these provisions to indicate that the goods in respect of which an order of confiscation or penalty can be passed under Sections 111 and 112 of the Act, must be goods seized under the provisions of Section 110 of the Act. The period of six months mentioned in Section 110 relates only to the seizure of the goods and not to validity of the notice under Section 124 of the Act. Section 124 does not lay down any period within which the notice required by it has to be given.

14. A similar view is taken by a single Judge of the Punjab High Court in the case of Muni Lal v. Collector, Central Excise, Chandigarh, and later on by a single Judge of the Calcutta High Court in the case of All India General Transport Corporation v. Collector of Central Customs, 79 Calcutta Weekly Notes 663. Thus it is very clear that an invalid order to retain the goods under seizure passed under Section 110(2) does not affect the validity of a show cause notice issued

under Section 124(a) of the Act.

15. Coming to the appeal preferred by the original respondents. Mr. Joshi has urged two submissions before us. First he submitted that the order passed by the learned Judge for return of the books of account and documents should be modified as the said books of account and documents are either tendered as exhibits in the proceedings before the learned Magistrate or in the proceedings for adjudication under Section 124 or may be required for the said purpose. Sub-section (3) of Section 110 of the Act empowers a proper officer to seize any documents or things which in his opinion will be useful for or relevant to any proceedings under the Act. The books of account and documents which have been tendered as exhibits in the proceedings before the learned Magistrate or which are required to be tendered as such exhibits, can be retained by the Customs Authorities. The book of account and documents which are already tendered or likely to be tendered as exhibits in the proceedings for confiscation of goods and imposition of personal penalty can equally be retained by the appropriate authorities in view of the said proceedings. The rest of the books of accounts and documents which are not required to be tendered as exhibits in either of the two proceedings are irrelevant to the proceedings, will have to be returned to the petitioners because such books of account and documents will not be of any useful purpose to the authorities for either of the proceedings.

16. Mr. Joshi has invited our attention to the events that have taken place after the petition was disposed of by the trial Court in relation to silver, other pieces of bullion and other articles. The learned Judge by his order directed return of silver, station wagon, calculating machines etc. subject to the direction that the said property should not be returned to the petitioners in compliance with his judgment till two weeks from the original respondents an opportunity to apply for an order under Section 516A of the Code of Criminal Procedure to the learned Magistrate before who the criminal proceedings were pending. Pursuant to such liberty an application was made on behalf of the prosecution under Section 516A of the Code of Criminal Procedure on July 27, 1972. In the said application, the partnership firm and the two of its partners filed an application before the learned Magistrate inter alia stating that they agreed not to transfer or alienate the seized items without the written permission of the Court. On the said application on August 22, 1972 the learned Magistrate passed the following orders :-

"On the accused executing a bond in the sum of Rs. 5,52,000/- with two sureties of equal amount, the complainant shall deliver to them all the silver ingots and the silver pieces seized by him on 23/24-1-1969 and as mentioned in the panchnama and on usual conditions, except samples produced in Court." On the accused executing a bond with one surety in the sum of Rs. 15,000/- with one surety of the like amount, the complainant shall deliver to them the Willy's Station Wagon No. MRW-9690 which was seized from the

accused and on a usual conditioners.

The accused shall not deal or dispose of the Station Wagon, Silver ingots or silver pieces until the final disposal of this case."

Against the order passed by the learned Magistrate a Criminal revision application being Application No. 682 of 1972 was filed on behalf of the Customs Authorities. That application was disposed of by Bhole J. by his judgment and order dated October 9, 1972. In the course of his judgment he observed as under :-

"I do not therefore think that in the facts and circumstances of this case it is necessary to alter this order passed by the Additional Chief Presidency Magistrate. The order in my view will sufficiently take care of the silver and will not in any way jeopardise the criminal proceedings or the proceedings before the Customs Authorities. I will, however, add one more condition. The Customs Authorities shall be given an opportunity to inspect the silver which is in the custody of the respondents in the first week of every month and they shall notify the Customs Authorities as well as the Court below the place where the silver is stored."

By an order dated October 27, 1972 the learned Magistrate directed the Customs Authorities in the criminal case to return the silver bars, silver pieces and ingots lying in the Custody of the Department to accused Babubhai Mohanlal Choksey, partner of M/s. Mohanlal Devdanbhai Choksey. It was also confirmed that as per the order two sureties of Rs. 2,76,000/- each have been accepted by it and their bonds have been taken in Court. Pursuant to the said order dated October 27, 1972 the seized silver, excepting samples, was returned to accused Babubhai Mohanlal Choksey, partner of M/s. Mohanlal Devdanbhai Choksey.

17. Apart from these criminal proceedings, proceedings for confiscation of the goods including silver, ingots and silver pieces, station wagon and the calculating machine are also initiated by the authorities under that Act and the said proceedings are pending. In this view of the matter, the writ of mandamus passed by this Court for return of silver and silver pieces, the station wagon, the calculating machine will have to be modified as per the following directions :-

18. So far as the bars of silver and silver pieces are concerned, which are already returned to the petitioners under the bond, the same will continue to remain with the petitioners subject to such final orders as may be passed by the Magistrate. In case before the criminal proceedings are over, the proceedings for confiscation of the goods before the Customs Authorities are completed and an order for confiscation is made, then the Customs Authorities will be at liberty to apply to the learned Magistrate to pass appropriate orders in respect of such items of goods or things which

may be confiscated. Such compliance with the order of Magistrate either upon disposal of the proceedings or upon disposal of the adjudications proceedings under the Act will be subject to the right of the aggrieved party to adopt such legal proceedings as may be available in accordance with law. So far as the calculating machine is concerned, Mr. Mehta on behalf of the petitioners states that the petitioners will produce the same as and when required in adjudications proceedings before the Customs Authorities without prejudice to the petitioners' rights and contentions. So far as the Station Wagon is concerned, the same continues to remain with the Customs Authorities as no bond contemplated by the order of Magistrate has been executed by the petitioners. So far as books of account and documents are concerned, the Customs Authorities shall return all such books of account and documents except those which have been tendered as exhibits or which are likely to be tendered as exhibits in the criminal proceedings or in the adjudication proceedings before the Customs Authorities.

19. In the result, the Appeal No. 81 of 1972 filed by the Petitioners is dismissed with costs.

20. So far as Appeal No. 84 of 1972 filed by the Customs Authorities and the Union of India is concerned, the order passed by the trial Court will stand modified as per the directions given above and both the parties will bear their respective costs to this appeal. Liberty on the respondents' attorneys in Appeal No. 81 of 1972 to withdraw the amount of Rs. 500/- deposited by the petitioners as security for costs. Liberty to the Customs Authorities and the Union of India to withdraw the sum of Rs. 500/- deposited by them in Appeal No. 84/72 towards security for costs.