

PROVISIONS RELATING TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY & ALLIED PROVISIONS

Question 1

The customs authorities had confiscated the gold carried by Mr. Lovegold from Bahrain. Mr. Lovegold informed the customs authorities that he was filing an appeal against the order of confiscation. The customs authorities informed Mr. Lovegold that the confiscated goods had been handed over to the warehouse of the custom house for disposal and that the same would be auctioned consequently. Discuss briefly the validity of the action taken by the customs authorities with the help of decided case law.

(5 Marks) (May 2011)

Answer

No, the action taken by the custom authorities is not valid in law. The facts are similar to the case decided by the Bombay High Court in the matter of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) E.L.T. 402 (Bom.)*. The High Court noticed that the assessee had informed the Customs authorities that he is filing an appeal against the original order of confiscation. Handing over the confiscated gold immediately after serving the order of confiscation was held to be improper. The Customs authorities ought to have stopped the auction sale of the confiscated gold after receipt of letter from the assessee.

Note: A stay has been granted by the Supreme Court in the aforementioned case vide *Union of India v. Shabir Ahmed Abdul Rehman 2010 (253) E.L.T. A142 (S.C.)*.

Question 2

Explain briefly, legal provisions relating to power to summon persons under the Customs Act, 1962.

(2 Marks) (June 2009)

Answer

Section 108 of the Customs Act, 1962 provides that any Gazetted Officer of Customs shall have the power to summon any person either to present himself for enquiry or produce a

document or any other thing in any inquiry which the officer is making under the Act. All persons who are summoned shall be bound to attend either in person or by an authorized agent and state the truth or make statement, produce document and other things.

Question 3

Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962.
(2 Marks) (Nov 2008)

Answer

Section 124 of the Customs Act, 1962 provides that before confiscating goods or imposing any penalty on any person, a **show cause notice [SCN]** must be issued to the owner of goods giving grounds for confiscation or imposition of penalty and he should be given an opportunity to make representation and of being heard. The show cause notice can be issued only with the prior approval of the officer of customs not below the rank of Assistant Commissioner of Customs.

The notice and the representation, at the request of the person concerned, can be oral.