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## Retention of Seized Cash Beyond Six Months Without Valid and Communicated Extension Order is Without Jurisdiction

The Hon'ble Allahabad High Court in *Shalabh Agarwal And Another v. Additional Director General and Another [WRIT TAX No. 2070 of 2026 dated May 27, 2026]* allowed the writ petition and held that the retention of seized cash by the Directorate of Revenue Intelligence (“DRI”) beyond the statutory period of six months under Section 110(2) of the Customs Act, 1962 (“the Customs Act”) was wholly without jurisdiction in the absence of a validly approved and communicated extension order, and further castigated the conduct of the DRI in transferring the seized cash to the Income Tax authorities during the pendency of writ proceedings as a “deliberate attempt to over reach and defeat the proceedings”.

### Facts:

Shalabh Agarwal and another (“the Petitioners”) are connected with the bullion entities M/s Sanklap Golds Pvt. Ltd. and M/s KB Gold & Bullions, Bareilly. On August 20, 2025, the DRI conducted search proceedings at the premises of the said entities and seized cash amounting to Rs. 25,20,000/- under the provisions of the Customs Act.

The statutory period of six months for issuance of show cause notice under Section 124 of the Customs Act expired on February 19, 2026. However, neither any show cause notice was issued nor was any time extension order passed and communicated to the Petitioners prior to the expiry of the said six-month period.

Aggrieved, the Petitioners filed the writ petition on April 7, 2026, seeking a writ of mandamus directing release of the seized cash. During the proceedings, the DRI relied upon an internal note-sheet dated February 18, 2026, which was claimed to be the order passed under Section 110(2) extending the period for issuance of show cause notice by a further six months. The said note-sheet recited that investigation was pending in respect of the seized cash and certain

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currency notes suspected to be Fake Indian Currency Notes (“**FICN**”) recovered during subsequent searches in September 2025.

It was, however, admitted by the DRI before the Court that the said note-sheet/order dated February 18, 2026 was never communicated to the Petitioners before the expiry of six months. Further, during the pendency of the writ petition and only two days prior to the date fixed for hearing, on May 19, 2026, the Principal Director, Income Tax, Lucknow issued a requisition under Section 248(1) of the Income Tax Act, 2025. On May 20, 2026, the seized cash of Rs. 25,20,000/- was made over by the DRI to the Income Tax authorities, without informing the Court.

## **Issue:**

Whether the retention of seized cash by the DRI beyond the statutory period of six months under Section 110(2) of the Customs Act, in the absence of a validly approved and communicated extension order, was without jurisdiction?

## **Held:**

The Hon’ble Allahabad High Court in **WRIT TAX No. 2070 of 2026** held as under:

- Observed that, the note-sheet dated February 18, 2026 did not contain prior approval of the competent authority reflecting application of mind, and the signature appended thereunder was “nothing more than a rubber stamp, affixed without application of mind”, thereby failing to satisfy the requirement of the first proviso to Section 110(2) of the Customs Act, which mandates that the extension may be granted only “for reasons to be recorded in writing”.
- Noted that, even assuming the existence of such an extension order, it was admittedly never communicated to the Petitioners before the expiry of the six-month period from

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the date of seizure, thereby failing the second mandatory condition under the first proviso to Section 110(2).

- Relied on the rulings of the Hon'ble Supreme Court in ***Chhugamal Rajpal v. S.P. Chaliha and Others, (1971) 1 SCC 453, Union of India v. Rai Singh Dev Singh Bist, (1973) 3 SCC 581 and Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151***, to reiterate that statutory approvals affecting the rights of parties cannot be mechanical and must disclose due satisfaction founded on relevant material.
- Held that, the Petitioners had acquired an indefeasible right to the return of the seized cash immediately upon the expiry of the statutory period of six months on February 19, 2026, and that no requisition from the Income Tax authorities existed at that stage.
- Strongly deprecated the conduct of the DRI in transferring the seized cash to the Income Tax Department on May 20, 2026, pursuant to a requisition issued just a day earlier under Section 248(1) of the Income Tax Act, 2025, during the active pendency of writ proceedings and without informing the Court. The Court observed that such conduct amounted to a deliberate attempt to “over reach and defeat the proceedings” and that the DRI had acted beyond jurisdiction while dealing with the Petitioners’ property held in trust after the expiry of the statutory period.
- Directed that, taking note of the unconditional apology tendered by the Joint Director, DRI through an affidavit, and the Office Order dated May 24, 2026 issued by the Additional Director General, DRI, Lucknow Zone, directing officers not to act in sub-judice matters without first verifying the status of pending judicial proceedings, and the undertaking by the Revenue that the DRI authorities shall in future act in accordance with law, the exemplary costs originally proposed at Rs. 10,00,000/- were reduced to Rs. 1,00,000/-.

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- Held that, the Petitioners may now be entitled to return of the money from the Income Tax authorities in accordance with law, but reiterated that the statutory safeguards under Section 110(2) of the Customs Act must be scrupulously complied with.

The Hon'ble Court while concluding observed in paragraph 26 of the judgment that:

*“In view of above we are forced to reach a conclusion that DRI authorities have deliberately attempted to defeat the ends of justice and specifically the present petition. Their conduct appears to be directed not to participate in the proceedings, but to over reach and defeat the proceedings, by acting in a manner wholly impermissible in law and beyond their jurisdiction.”*

## **Our Comments:**

Section 110 of the Customs Act, 1962 governs seizure of goods, documents and things by the proper officer where there is a reason to believe that such goods are liable to confiscation under the Customs Act. Sub-section (2) of Section 110, which is central to the present controversy, mandates that where any goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure, the goods **shall** be returned to the person from whose possession they were seized. The first proviso, however, permits the Principal Commissioner of Customs or the Commissioner of Customs to extend such period by a further period not exceeding six months *“for reasons to be recorded in writing”* and further mandates that such extension shall be informed to the person from whom such goods were seized *“before the expiry of the period so specified”*.

The statutory scheme thus prescribes a twin-test for valid extension: **first**, a reasoned and considered order by the competent authority reflecting independent application of mind, and **second**, communication of such order to the affected party before expiry of the statutory period. Failure on either count renders the continued retention of seized property without jurisdiction and entitles the person from whom the seizure was effected to an indefeasible right of return.

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The principle that statutory approvals affecting valuable rights cannot be granted mechanically is well-entrenched. The Hon'ble Supreme Court in ***Chhugamal Rajpal v. S.P. Chaliha, (1971) 1 SCC 453***, in the context of approval under Section 151 of the Income Tax Act, 1961 for issuance of reassessment notice, held that mere noting of the word “yes” and affixing of signature by the Commissioner amounted to mechanical accord of permission and reflected substitution of “form for the substance”. The same principle was reiterated in ***Union of India v. Rai Singh Dev Singh Bist, (1973) 3 SCC 581*** and in ***Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151***, where it was emphasised that the approving authority must apply its mind and examine the fitness of the case before granting approval.

In ***S. Ganga Saran and Sons (P) Ltd. v. ITO, (1981) 3 SCC 143***, the Hon'ble Supreme Court further held that the expression “reason to believe” is stronger than “is satisfied” and the belief must be based on reasons that are relevant and material, with a rational and intelligible nexus between the reasons and the belief. A coordinate bench of the Hon'ble Allahabad High Court in ***Mudra Exports v. Deputy Commissioner of Income Tax, 2024:AHC:59707-DB***, relying on ***Indra Prastha Chemicals Ltd. v. CIT, (2004) 271 ITR 113***, reiterated that the formation of opinion and belief is a **condition precedent** and the failure to fulfil such condition vitiates the entire proceedings.

The judgment is significant on two further counts. **First**, it reinforces that mere internal noting on a file, without an order disclosing independent reasons and due application of mind by the competent authority, cannot pass muster as an “approval” under the first proviso to Section 110(2). **Second**, the requirement of communication of the extension order to the affected party before expiry of six months is a substantive safeguard and not a mere procedural formality – absent such communication, the seized property must be returned, irrespective of any subsequent requisition by another statutory authority. The transfer of seized property to a third authority after expiry of the statutory period, particularly during the pendency of writ proceedings, has been justifiably termed by the Court as an attempt to “over reach and defeat the proceedings”.

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The decision serves as an important reminder that the powers of seizure and continued retention of property are an exception to the general right to property and must be exercised strictly within the four corners of the statute. Any departure from the prescribed procedure will not be countenanced and may invite imposition of costs and adverse observations on the conduct of the officers concerned. The Office Order dated May 24, 2026 issued by the Additional Director General, DRI, Lucknow Zone, directing all officers under the DRI Lucknow Zonal Unit to verify the status of pending judicial proceedings before taking any action in sub-judice matters, is a welcome corrective measure that should serve as a binding internal discipline for revenue authorities at large.

The ratio of the present judgment is squarely applicable to all cases of seizure under the Customs Act where the limitation under Section 110(2) is sought to be extended by the department, and reinforces the right of the assessee to demand return of seized goods/cash upon expiry of the statutory period unless both the conditions of a reasoned extension order and its communication before expiry are satisfied.

## **Relevant Provision:**

### **Section 110(2) of the Customs Act, 1962:**

*“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 Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:*

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*Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.”*

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