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## Currency seized during investigation as evidence of Hawala transactions is a 'thing' under Section 110(3) of the Customs Act and not 'goods' – Six-month time limit for issuance of SCN inapplicable

The Hon'ble Madras High Court (Division Bench) in ***Principal Commissioner of Customs v. Shri Vikram Jain [W.A. No. 1855 of 2026 dated August 10, 2026]*** set aside the order of the Learned Single Judge directing return of the seized currency and held that Indian currency seized during the investigation of fraudulent claims under the Amnesty Scheme of the Directorate General of Foreign Trade (“DGFT”), where such currency constituted evidence of Hawala transactions and illegal gratification, is liable to be treated as a “thing” under Section 110(3) of the Customs Act, 1962 (“the Customs Act”) and not as “goods” seized under Section 110(1) of the Customs Act. Consequently, the six-month period prescribed under Section 110(2) of the Customs Act for issuance of a notice under Section 124 of the Customs Act is inapplicable and such currency may be retained for the duration of the proceedings.

### Facts:

The Special Intelligence and Investigation Branch (“SIIB”), Chennai Preventive Commissionerate, received an incident report dated April 25, 2024 regarding misuse of the Amnesty Scheme of the DGFT for one-time settlement of default in export obligation by Advance Licence and Export Promotion Capital Goods (“EPCG”) authorization holders. Investigation revealed that certain importers had fraudulently obtained closure letters from the DGFT by forging documents and bribing officials and that entries in the Export Obligation Discharge Certificate (“EODC”) section register had been forged with unknown signatures.

The representative of one of the suspected importer companies admitted having paid Rs. 50 lakhs as bribe to an Appraiser of the Customs Department for forging letters to the DGFT to show that challan payments of approximately Rs. 1.66 crores were made for closure of cases under the Amnesty Scheme. The investigation identified loss of revenue of about Rs. 5 crores.

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In the further course of the investigation, the premises of M/s. Globe Opticals, Chennai, owned by Shri Vikram Jain (**“the Respondent”**), was searched on May 8, 2024. The search revealed that the father of the Respondent along with another person was in control of the shop and was allegedly acting as hawala agents. Cash to the tune of Rs. 21,55,000/- along with a mobile phone was seized under mahazar on the reasonable belief that it represented unaccounted money earned through illegal gratification pertaining to fraudulent closure of EPCG licences. The father of the Respondent in his statement recorded under Section 108 of the Customs Act admitted his role in the hawala transactions.

The Respondent filed a writ petition seeking quashing of the seizure memo dated May 8, 2024 and release of the seized items contending that the currency seized belonged to him and was duly accounted for and that since no Show Cause Notice (**“SCN”**) was issued within six months from the date of seizure as mandated under Section 110(2) of the Customs Act, the money was liable to be returned.

The Learned Single Judge vide order dated December 10, 2025 passed in W.P. No. 10428 of 2025 held that the seizure of currency effected under Section 110(1) of the Customs Act must necessarily comply with the timeline prescribed under Section 110(2) of the Customs Act and since no SCN was issued within the stipulated period of six months, directed refund of the seized cash within eight weeks with liberty to the Department to initiate fresh action.

Aggrieved by the said order, the Department filed the present intra-court Writ Appeal, *inter alia*, contending that the currency was not seized as contraband or for confiscation but as crucial material evidence of Hawala transactions and illegal gratification squarely falling within the ambit of “things” under Section 110(3) of the Customs Act for which no time limit is prescribed and that premature release of such evidence would gravely prejudice the ongoing investigation which also discloses offences under other statutes.

## **Issue:**

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Whether Indian currency seized during the course of investigation as material evidence of Hawala transactions and illegal gratification constitutes “goods” seized under Section 110(1) of the Customs Act attracting the six-month limitation for issuance of SCN under Section 110(2) of the Customs Act or a “thing” under Section 110(3) of the Customs Act which may be retained till the completion of proceedings?

## **Held:**

The Hon’ble Madras High Court in ***W.A. No. 1855 of 2026*** held as under:

- **Observed that**, Section 110 of the Customs Act deals with seizure of goods, documents and things. Where goods are seized under Section 110(1) of the Customs Act and no notice under clause (a) of Section 124 of the Customs Act is given within six months of the seizure (extendable by a further period of six months), the goods shall be returned to the person from whose possession they were seized. In contrast, Section 110(3) of the Customs Act, which empowers the proper officer to seize any documents or things which in his opinion will be useful for or relevant to any proceeding under the Customs Act, does not prescribe any time limit and such documents or things are permitted to be retained for the duration of the proceedings.
- **Observed that**, currencies fall under the generic term “goods” only when transported through the customs frontier, whether legally or illegally, in which case Section 110(1) of the Customs Act will apply and the time frame prescribed under Section 110(2) of the Customs Act will follow. However, where currencies are seized by the proper officer in connection with other violations or offences, they are deemed to be “things” covered under Section 110(3) of the Customs Act.
- **Noted that**, in the present case, the currency was seized during the course of investigation into fraudulent closure of EPCG licences under the Amnesty Scheme involving bribery, forged documents and Hawala transactions and the investigation had

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disclosed possible violations not only under the Customs Act but also under the Income Tax Act, the Prevention of Corruption Act and the Prevention of Money Laundering Act.

- **Held that**, for the seizure of Indian currency in such circumstances, Section 110(3) of the Customs Act is the correct provision of law to be applied and not Section 110(1) read with Section 110(2) of the Customs Act. Further, before conclusion of the investigation, the Court, in exercise of power under Article 226 of the Constitution, cannot order release of the crime proceeds as it would pre-conclude and foreclose the investigation of a grave economic offence by ignoring relevant facts and other allied statutes.
- **Directed that**, the Department shall proceed with the investigation to reach its logical end and shall deposit the currencies seized in an interest-earning scheme of any Nationalised Bank till the completion of the investigation.

Accordingly, the Hon'ble High Court set aside the order of the Learned Single Judge and allowed the Writ Appeal.

## **Our Comments:**

Section 110 of the Customs Act operates in three distinct limbs. Section 110(1) of the Customs Act empowers the proper officer to seize goods where he has reason to believe that such goods are liable to confiscation under the Customs Act. Section 110(2) of the Customs Act acts as a statutory safeguard by mandating return of the goods seized under Section 110(1) where no notice under Section 124(a) of the Customs Act is issued within six months of seizure, extendable by a further period of six months by the Principal Commissioner. Section 110(3) of the Customs Act, on the other hand, permits seizure of any documents or things which, in the opinion of the proper officer, will be useful for or relevant to any proceeding under the Customs Act, without any prescribed outer time limit for their retention.

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The Hon'ble Supreme Court in ***Assistant Collector of Customs v. Charan Das Malhotra [AIR 1972 SC 689]*** and in ***I.J. Rao v. Bibhuti Bhushan Bagh [(1989) 3 SCC 202]*** has emphasized the mandatory character of the timeline under Section 110(2) of the Customs Act and held that the extension of the six-month period is a quasi-judicial function which cannot be exercised mechanically. The present ruling does not dilute that safeguard but clarifies its field of operation, i.e., the protection of Section 110(2) of the Customs Act travels only with goods seized for confiscation under Section 110(1) of the Customs Act and not with material seized as evidence under Section 110(3) of the Customs Act. In doing so, the Division Bench has followed the reasoning of the Hon'ble Calcutta High Court in ***Rohit Kumar v. Union of India (dated December 21, 2001)***, wherein money lying in a bank account was held to qualify as a "thing" under Section 110(3) of the Customs Act and its seizure as material evidence for investigation was held to be legally permissible.

It is pertinent to note that a parallel controversy exists under the GST law in the context of seizure of cash under Section 67(2) of the CGST Act, 2017, which similarly permits seizure of "documents or books or things". However, the judicial trend under GST has leaned in favour of the taxpayer. The Hon'ble Delhi High Court in ***Deepak Khandelwal v. Commissioner of CGST [W.P.(C) No. 6739 of 2021 dated August 17, 2023]*** held that cash does not fall within the definition of "goods" and cannot be seized as a "thing" under Section 67(2) of the CGST Act unless it is relevant for the proceedings, and directed release of the seized cash. Similarly, the Hon'ble Kerala High Court in ***Shabu George v. State Tax Officer (IB) [W.A. No. 514 of 2023 dated March 24, 2023]***, against which the Revenue's SLP was dismissed by the Hon'ble Supreme Court, held that cash not forming part of stock-in-trade could not be seized during a GST search. The Hon'ble Delhi High Court in ***K.M. Food Infrastructure Pvt. Ltd. v. DGGI [W.P. (C) No. 328 of 2024 dated February 13, 2024]*** also directed return of seized cash along with interest.

The present judgment therefore marks a significant point of divergence. Where seized currency is characterized as evidence of a larger economic offence spanning multiple statutes

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such as the Income Tax Act, the Prevention of Corruption Act and the Prevention of Money Laundering Act, the Department may sustain its retention under Section 110(3) of the Customs Act beyond the six-month window, subject of course to the seizure being bona fide and the currency having a demonstrable nexus with the investigation. Taxpayers and professionals should, therefore, carefully examine the seizure memo and the stated purpose of seizure, as the classification of the seized currency as “goods” or as a “thing” will determine the availability of the limitation defence under Section 110(2) of the Customs Act. The direction of the Hon’ble High Court to deposit the seized currency in an interest-earning scheme of a Nationalised Bank till completion of the investigation is also a welcome balancing measure that protects the value of the seized amount pending adjudication.

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