Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 11199 of 2019

(Arising out of Notification Order-F-NO-VIII-48-09-ADJ-ADC-MCH-2019-20 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

M/s. Sunshine Stones **......Appellant**
F-355-356-c(b) Iv Phase, Riico Industrial Area,
Ksihangarh, Ajmer, Rajasthan.

VERSUS

C.C.-Mundra **.......Respondent**
Office of the Principle Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Kutch, Gujarat-370421

APPEARANCE:
Sh. Amit Laddha, Advocate for the Appellant
Sh. G. Jha, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

DATE OF HEARING: 03.10.2019
DATE OF DECISION:03.10.2019

Final Order No. A/ 11895 /2019

RAMESH NAIR

The issue involved in the present case is that whether the Ld. Commissioner can extend the time limit for issuance of SCN under Section 110(2) in respect of the goods seized, without following the principles of natural justice such as issuance of SCN and giving hearing to the person from whom the goods were seized.

2. Sh. Amit Laddha, Ld. Counsel appearing on behalf of the appellant, at the outset submits that there is no dispute on the fact that the Ld. Commissioner has not given any SCN before passing an order, for extension of time limit to issue SCN under Section 110(2) of the Customs Act, 1965, he submits that the same issue has been decided by this Tribunal in the case of Rajkamal Industries (P) Ltd. vide Final Order No. A/10953/2019 accordingly, the impugned is not sustainable.

3. Sh. G. Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that under Section 110(2) the Commissioner has power to extend the time limit for issuance of SCN, hence he legally exercised the power, therefore, the order passing extension of time limit is legal and correct. He placed reliance on the following judgments:

- Suresh Gangaram Hole 2010 (327) ELT 555 (Tri. Mumbai)
- Suresh Gangaram Hole 2018 (362) ELT 210 (Bom.)
- Directorate of Revenue Intelligence vs Akansha Sytex 2017 (354) ELT A111 (SC)

4. Heard both the sides and perused the records. I find that the very same issue has been considered by this Tribunal in the case of Rajkamal Industries (P) Ltd. (Supra). The relevant order portion is reproduced below:

> "4.Heard both the sides and perused the records. We find that the issue has to be decided by us is that whether the Commissioner is required to issue notice to the importer proposing extension of time limit for issuance of SCN or he may extend the time limit without putting the importer to the notice in this regard. We find that on the identical issue for the prior period to the amendment in Section 110 i.e. before 29.03.2018, Hon'ble Bombay High Court considered the identical issue in the case of Principal Commissioner of Customs vs Beauty Gem 2018 (359) ELT 299 wherein the Hon'ble High Court has passed the following order.
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> > ***"10.****We have perused the show cause notice dated 25th November, 2014. Paragraphs 2.1 to 2.3 of the order-in-original are reproduction of what is stated in the show cause notice. There is no finding recorded by the Commissioner that he was satisfied that investigation is being pursued seriously and there is a need for grant of more time for taking the investigation to its logical conclusion. There is no finding recorded that sufficient cause was made out by the Customs Officer. In view of the law laid down by the Apex Court and in view of the express words used in proviso to sub-section (2) of Section 110, the Commissioner could not have extended the time without recording his satisfaction on basis of the material on record that investigation is being pursued seriously and there is a need for more time for taking it to its logical conclusion. Merely because investigation is delayed, that is no ground for grant of extension of time so as to defeat the right created under sub-section (2) of Section 110.*
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> > ***11.****Perusal of the impugned order of the Appellate Tribunal shows that it records findings of fact based on the material which was available on record. It is recorded that the inquiry with respect to live consignment is completed in May-June, 2014 when the reports were received from the laboratory. It is recorded that*

laboratory reports have been shown to Panch witnesses on 29th May, 2014. The Appellate Tribunal observed that the request for extension of time was very vague. The Appellate Tribunal was conscious of the fact that show cause notice dated 25th May, 2015 has been issued. In short, the Appellate Tribunal has recorded a finding of fact that sufficient cause was not made out by the Respondent. As stated earlier, the Commissioner has not recorded satisfaction in terms of proviso to sub-section (2) of Section 110 and what is held by the Apex Court in paragraph 13 of its decision in the case of I.J. Rao.

12.*Therefore, on merits, we find no reason to interfere with the findings of fact recorded by the Appellate Tribunal that sufficient cause was not made out for extension of time.*

13.*Grant of extension of time as provided in the proviso affects the right which is created under sub-section (2) of Section 110 in favour of the person from whom the goods have been seized. If no notice under Section 124 is issued within a period of six months from the date of the seizure, the persons from whom goods are seized is entitled to return of goods as a matter of right. Therefore, we do not agree with the submission made by the learned counsel appearing for the Appellant that as show cause notice was issued after completing investigation within the extended time, the Appeal before the Appellate Tribunal was rendered infructuous. Even if the Appellate Authority has found that no grounds existed for extension of time, the notice issued under Section 124 of the Customs Act remains unaffected. Even that is the finding recorded by the Appellate Tribunal in the impugned judgment and order and in particular in paragraph 7 thereof.*

14.*We, therefore, find that there is no reason to interfere with the impugned order of the Appellate Tribunal. In any event, no substantial question of law arises much less a question of law.*

15.*Accordingly, we find no merit in the Appeal and the same is dismissed. Pending Notice of Motion does not survive and the same is disposed of."*

5. From the above order it is observed that for extending the time a SCN was issued despite this the Hon'ble High Court has held that exceeding of time limit cannot be made without recording any finding, accordingly, Revenue's appeal was dismissed. Similarly in the case of Gaunir Impex Pvt. Ltd. 2017 (3460 ELT 106 (MAD) the Hon'ble High Court observed that even though a SCN for extension of time was issued by it is only before three days of the expiry of the period and seeking extension of time to reply the SCN was turned down. The Hon'ble High Court has held that the department has not followed the natural justice, the writ petition was allowed.

6. In both the above judgements, the department has issued SCN even for extending the time limit for issuance of SCN under Section 110 however in the present case no SCN was issued. The department's submission is that after amendment in the Section 110, there is no need of issuance of SCN. The only requirement is that the Commissioner has to record the reason in writing while extending the time limit for issuance of SCN. We find that even the Commissioner has not recorded the reason properly in the order. However the same issue for the period even after the amendment in Section 110 has come up before the Tribunal-Delhi in the case of M/s Swees Gems & Jewellery. Vide Final Order No. 50283-50284/2019, the Tribunal after interpreting and discussing the difference in the provision of Section 110(2) before and after amendment came to the conclusion that the amendment is not such that the department is not required to issue SCN. The relevant findings of the Tribunal is as under:

> *"6. We have considered the rival contentions and also perused the case record along with the investigation file submitted before the Bench by ld. AR. In these cases, the issue to be decided is as to whether after the amendment of Section 110(2) of Customs Act by Finance Act, 2018 is there any need for issuance of the Show Cause Notice before the extension is permitted by another six months on the reasonable ground by the Commissioner/adjudicating authority. To resolve the controversy, it will be appropriate to refer the Section 110(2) before the amendment and also after the amendment vide Finance Act, 2018. The same is reproduced as under :*

Section 110(2) before	***Section 110(2) after***
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***	*Where any goods are seized under sub-section (1) and no (2) 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*

***being shown**, be extended by the [Commissioner of Customs] for a period not exceeding six months*	*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.***

In this context, we also refer to paragraph "163"of FM speech regarding the need for amendment under the Customs Act which is reproduced as under:

> ***" I also propose to make certain change to the Customs Act, 1962 to further improve ease of doing business in cross border trade, and to align certain provisions with the commitments under the Trade Facilitation Agreement. To smoothen dispute resolution processes and to reduce litigation, certain amendments are being made, to provide for pre-notice consultation, definite timelines for adjudication and deemed closure of cases of tose timelines are not adhered to."***

Clause 90 of the Bill seeks, to amend Section 110 of the Customs Act so as to give power to extend the period for issuing Show Cause Notice in case of seized goods by a further period of six months to case in cases where no order for provisional release of goods has been passed. We find that similar issue has been decided by the coordinate bench of this Tribunal vide Final Order No. 75047-75048/2018 dated 17.1.2019 in the case of ***S.R.K. Metal & Industries & Pink Commercial**, wherein it is held as under:*

> *"Our attention was also drawn towards the decision of Sardar Kulwant Singh vs. Collector of Central Excise and Customs,*

wherein it is held that an order extending period of issue of Show Cause Notice under Section 110(2) and 124 of the Customs Act, 1962, without giving an opportunity of being heard to the affected party is illegal. Further, the requirement of issue of Show Cause Notice issued under Section 124 of the Customs Act in such a case was held to be a must relying upon the various judgments referred as above. Relying on these judgments, we find that the seized goods are required to be returned to the person from whom the seizure has been made of fact of expiry of six month under Section 110 of the Act without extension of time. Regarding the Revenue 8 C/53512-53513/18 contention that with effect of the amendment carried out in Section 110(2) of the Customs Act, the requirement of issuance of Show Cause Notice is dispensed with is without any basis. In fact, we find that after the amendment the Adjudicating Authority has to give the proper reasoning by way of reasoned order after examining the requirement for extension of time period as per sub proviso 2 of Section 110. Question as to whether the person claiming restoration of the goods under Section 110 of Act is entitled to notice before time is extending, this flows from the circumstances that this is a quasi judicial proceeding, and also it goes beyond the doubt that rights of a person are likely to prejudicially affected, he is entitled to opportunity to put forwarded his case before the Adjudicating Authority. Therefore, the person from whom the goods have been seized, is entitled to notice of the proposal before Adjudicating Authority for the extension of original period of the six months under Section 110(2) of the Customs Act subject to the restriction that he is not entitled to the information about the investigation which is in possession of the Investigating Agency as there can be no right in any person to be informed whose goods during the investigation material collected against him and there is no need for maintaining the investigation proceedings. This view has been affirmed in the ***I G Rao case referred****(supra). The provisions of Section 110(2) before and after the amendment is as identical but for "on sufficient cause being shown has been replaced with reasons to be recorded in* *writing extends such period", for a period not exceeding six months and inform the person from whom such goods were seized before expiry of the said period. Careful analysis of the provision makes it clear that the right of issuance of the Show Cause Notice for the extension of the period of six months as prescribed under said sub-Section of Section 110(1) remains same from which the emanate right of Show Cause Notice to the affected party in furtherance of Principle of Natural Justice as his rights are being prejudicially affected. The amendment will not obliterate the aforesaid position of issuance of Show Cause Notice has discussed above, even after insertion of with new sentence in the provisions of Section 110(2) of the Act. In fact, we are of the view that after amendment not only the Show Cause Notice is required to be issued by the Adjudicating Authority, but he has also to give a reasoned order after hearing the Investigation Officer and also taking view of the affected party from whom seizure has been made as his personal right is being deprived of which emanate from the Section 110(1) of the Act that entitled him to got the goods returned which has been seized from his possession. This is also cleared from statements of objects in the Finance Act as discussed above.*

13. In view of above, we are of the opinion that the impugned order is in violation in this provisions of Section 110 of the Customs Act has held in the various decisions discussed above. We have also seen the note sheet order of the Ld. Commissioner in this case. It is seen from the order that the Commissioner while extending the time period has only gone by the letter of DRI and not put up to him by his office without examining the merits of the such extension and recording his own finding. His finding is only two worded finding which is

'GC issued dated 26/06/2018'

Sd- M Chandra

This proves that there is no independent application of mind by the Commissioner (Port) for the extension of Show Cause Notice even by accepting his assertion that the only requirement is that the Principal

Commissioner/ Commissioner of Customs made for the reasons to be recorded in writing, extends such period to further period not extending six months and inform the person from whom the goods are seized. We have also considered the submission made by Ld. Advocate that the aforesaid amendment has been brought with effect from 18/3/2018. Obviously, the amendment will not have its application from the retrospective date. The amendment has not been made with retrospective effect as is evident from the Finance Act, 2018. We also find that in case of ***Commissioner of Income Tax (Central-1), New Delhi vs. Vatika Township****)[(2014) 0 SCC 670], Hon"ble Supreme Court has held that law enacted in absence of a provision in the statue about the same being with of retrospective effect in the Clause of Finance Act, the amendment will have prospective effect only. In view of that also we find that the impugned order is not sustainable as the new amended provision has been applied for the seizure made during period when the amendment was not there in the statue.*

14. In view of above our analysis as above, we are of the considered opinion that there is no legality for dispensing with the Show Cause Notices to the affected party even under the amended provisions of Section 110(2) of the Act. The Adjudicating Authority has erroneously held that this is no need of issue of Show Cause Notice in the cases of extension at hand.

15. Accordingly, we set aside the impugned orders and allow appeals with consequential relief as per law."

7. In view of above, we are of the view that the impugned order is not sustainable and the same are being set aside with consequential benefit, as per law, which includes the return of imported goods to the person from whom the seizure have been made."

7. In view of the above decision which is in respect of the amended provision of Section 110 (2), we are of the view that there is no legal authority with the department for dispensing with the issuance of SCN to the appellant, therefore, the impugned order passed without issuance of any SCN will not sustain. Accordingly, we set aside the impugned order and

allow the appeal with consequential reliefs if any, in accordance with law."

5. As per the above judgment, we have dealt with the position of law even post amendment and it was held that it is necessary to issue SCN on the part of the Commissioner for extension of time limit in issuance of SCN under Section 110(2). In the facts of the present case also neither any SCN was issued nor any hearing was given. The period of six months has already been expired, therefore, the impugned order extending time limit for issuance of SCN in the matter of seizure of the goods being passed without following the principles of natural justice will not sustain. Accordingly, the same is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Neha