

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11953 of 2019

[Arising out of Order-in-Appeal No OIA-VIII-48-09-ADJ-ADC-MCH-2019-20-1179 dated 13.05.2019 passed by Commissioner (Appeal) Customs, Jamnagar]

Shreyansh Marble Tiles Pvt Limited

.... Appellant

B-63, Ambaji Industrial Area Abu Road
SIROHI, AJASTHAN

VERSUS

Commissioner of Customs, Jamnagar

.... Respondent

Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE :

Shri Ritaj Kacher, Advocate for the Appellant

Shri Sharad Airan, Assistant Commissioner (AR) for the Respondent

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

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/10522 / 2020

DATE OF HEARING : 03.02.2020

DATE OF DECISION : 24.02.2020

RAJU :

This appeal has been filed by M/s. Shreyansh Marble Tiles Pvt. Limited against the order of Commissioner extending time limit for issuance of show cause notice under Section 110(2) of Customs Act, 1962.

2. Learned Counsel for the appellant pointed out that DRI officers on 09 December, 2018 searched the residential premises of the Appellant's Director and the factory premises of the Appellant company at B-63, Ambaji Industrial Area, Palapur, Ahmedabad Highway Road, Abu Road, Sirohi, Rajasthan. That, at the factory premises the officers found huge stocks of marble and granites in the open premises of the factory. That the crystallized glass panels were stored in another premises adjacent to the above factory premises and the Appellant informed the officers that they

had imported another eight containers of crystallized glass panels. The imports were through Mundra Port (four containers) and ICD, Tughlakabad (Port of discharge Pipavav) (four containers) and the same was yet to be cleared from the port or under process of clearance. That thereafter the officers along with the Appellant entered the godown premises situated at B-61A, Ambaji Industrial Area, Palanpur, Ahmedabad Highway Road, Abu Road, Sirohi. That DRI officers resumed the high sea sales, import purchase file, import file, sales bill file. Further, the goods imported at the Appellant factory premises were stated to be imported by bill of entry and in this regard eight bills of entry mentioned was given. That, further the aforementioned goods were detained through separate detention memo dated 09 December 2018 and the goods were handed over to the Director of the Appellant Company for safe custody. That the Appellant's Director was also issued summons dated 09 December 2018 to appear on 10 December 2018 at 10:00 AM before the DRI, Ahmedabad Zonal Unit with reference to mis-declaration / undervaluation in respect of crystallized glass panel and rough marble blocks by the Appellant company.

2.1. Learned Counsel stated that on 20 December 2018, the goods of the Appellant company imported against Bill of Entry No. 9298407 dated 17 December 2018 were examined at Saurashtra - CFS, AP & SEZ, Mundra which were declared as "Crystallized Glass Panel B Grade" of different size (2800x1500x17mm) and (2800x1200 x17mm) which were imported from Hong Kong. The said consignment of containers lying in the premises of Saurashtra — CFS, Mundra, were detained for further investigation. That, by letter dated 20.12.2018 the Inspector, (SIIB Import), ICD, TKD directed the Senior Manager, CONCOR, ICD, TKD, New Delhi to shift the containers covered under bills of entry No.9244913 dated 13 December 2018 filed by

the Appellant Company and the said seal should be cut in presence of SIIB officials.

2.2. Thereafter, vide Panchnama dated 21 December 2018, the officers of SIIB Import examined the goods imported vide bill of entry No.9244913 dated 13 December 2018 imported by the Appellant's company. That the Customs officers informed that as inquiry was being conducted by the DRI officers, Ahmedabad Zonal Unit, it may take some more time and accordingly, the goods may be warehoused in terms of Section 49 of the Customs Act, 1962. That on 26 December 2018 the Appellant's Director was issued another summons for appearing on 03 January 2019 before the DRI office. That by letter dated 28 December 2018, the Appellant company requested Deputy/ Assistant Commissioner of Customs, Customs House, Mundra, Mundra Port, for provisional assessment with regard to bill of entry No.9436001 dated 27 December 2018 and stated that two containers had arrived on 23 December 2018 and were lying uncleared on account of SIIB alerts. The SIIB detained the shipments in connection with the DRI alert at Mundra port. That the Appellant Company requested permission so that the goods may be provisionally assessed. That the Appellant Company by letter dated 28 December 2018 requested the Assistant Director, DRI, Ahmedabad that the goods i.e. Crystallized Glass Panel B Grade, imported vide bill of entry No. 9244913 dated 13 December 2019 and 9298407 dated 17 December 2019, which were seized vide seizure memos dated 13 December 2018 and 21 December 2018, were correctly classified under CTSH 70169000 and there is no mis-declaration in terms of description as well as the value. It was further requested that since verification was pending by the DRI and Customs authorities, the clearance of the goods may be allowed under bond or bank guarantee or both, so that the goods imported by the

Appellant might not suffer additional costs for storage at the ports / CFS. That, on 28 December 2018, the appellant requested Customs to issue NOC at the earliest to the Customs authorities at the port of Mundra MPSEZ and ICD, Tughlakabad, respectively to allow the Appellant to clear the goods on payment of appropriate differential duties, if any, reserving their rights to contest the same in future. That by letter dated 30 December 2018, addressed to Deputy Director, DRI, Ahmedabad Zonal Unit appellant stated that the goods detained at ICD, TKD, Delhi were dreadfully fragile and liable to be completely destroyed in shifting to warehouse. Therefore, in the interest of justice and prevention of any loss they requested to immediately release the goods on provisional assessment basis and to prevent further loss of the goods and demurrage they were ready to bear the bond and bank guarantee of whatever amount be desired from the office. Thereafter, on 31 December 2018 the Appellant deposited amount of Rs.20 Lacs in respect of consignment already cleared by the Customs and sold in local market, other than detained goods. That by letter dated 02 January 2019 the Appellant's Director addressed a letter to the DRI officer that a very high fever had gripped him and doctors had advised medical rest for a week.

2.3 Learned Counsel further pointed out that on 03.01.20 19 the officers had examined the goods at Saurashtra Freight Pvt. Limited, CFS, AP & SEZ, Mundra pertaining to bills of entry No.9436001 dated 27 December 2018 which was declared as crystallized glass panel — B- Grade. That these goods were also detained by detention memo dated 03 January 2019 on allegation of suspected undervaluation and mis-declaration. That the Senior Intelligence Officer vide their letter dated 07 January 2019, directed the Appellant's Director to supply original bill of entry along with all supporting documents such as commercial invoice packing list, bill of lading, freight and

insurance paid document etc. from 2016 till date other than documents withdrawn under Panchnama dated 09 December 2018 at the earliest.

2.4. Learned Counsel pointed out that, on 08 January 2019 the Appellant's Director went to DRI Ahmedabad office at 15:50 hours to request for NOC for releasing goods detained by DRI Ahmedabad at Mundra and TKD Port. He pointed out that although the summons issued to the Appellant for appearance on 11 January 2019, at around 16:30 hours DRI started taking statement and continued till 7:00 AM and the Appellant was not allowed to sleep the whole night. That the Appellant was completely under stress mentally and physically and further appellant's signatures were taken on various papers. That on the next day i.e. on 09 January 2019, the Appellant was summoned again and the complete statement was prepared on the computer in his absence and in the DRI office. That at approximately 13 hours on 09 January 2019 the DRI officers made him sign the statement and some papers. That even statements of Shri Rakesh Patni and Kaushik Thakkar was also got signed by him forcefully. Then subsequently the Appellant was arrested on 09 January 2019 at 16:30 hours. That the Appellant was produced on 09 January 2019 before the Additional Chief Metropolitan Magistrate at Ahmedabad and in the application for judicial remand stated that the Appellant had allegedly done undervaluation of a goods with regard to import of crystallized glass panel. That on 10 January 2019 the Appellant was in jail and he made deposit Rs.60 Lacs vide demand drafts with regard to the imports of crystallized glass panel already made by M/s. Shreyansh Marble Tiles Pvt. Limited. That on 12 January 2019 by seizure memo cum no objection for provisional release, the SIO, DRI, Ahmedabad Zonal Unit seized the goods which were detained by Panchnama on various dates. That SIIB vide letter dated 23.01.2019 had accorded

permission of provisional release of the said goods pertaining to bill of entry No.92449 13 dated 13.12.2018, 3772283 dated 27.10.2017 and 4282641 dated 06.12.2017 on submitting bond of re-determined value of goods of Rs.33,84,917/-, bank guarantee equal to differential duty of Rs.2,98,917/- and additional bank guarantee of Rs. 1 Lac. 2.26 That by letter dated 28 January 2019 SIO, DRI, Ahmedabad Zonal Unit had rebutted the allegations made by the Appellant's Director on 13 January 2019. That by communication dated 13 May 2019 the Appellant's company was informed that goods imported by him pertaining to bill of entry No.7756415 date 08.12.2016 filed with Customs House, Gujarat, Port Limited, Pipavav, which was detained vide seizure memo dated 09 December 2018 and seized vide seizure memo dated 12 January 2019 which was actually valued at Rs.61,188 / - instead of Rs.50,478/- as declared in the bill of entry thereby evading differential duty of "Rs. 3,153/-". That the Commissioner of Customs (Preventive), Jamnagar, in exercise of powers vested with him under first proviso of Section 110(2) of the Customs Act, 1962 has extended the time limit for issuance of Show Cause Notice for goods.

3 Being aggrieved by the impugned order dated 13 May 2019, the Appellant preferred the present appeal mainly on the following grounds :-

- (a) That the impugned order/communication has been passed without issuing the Show cause notice and giving opportunity to be heard to the appellant before extending the time limit for issuance of Show cause notice under the provisions of Section 110(2) of the Customs Act, 1962;
- (b) That even the amendment to the provisions of Section 110(2) of the Customs Act, 1962 by Finance Act, 2018 will

- not alter the situation as for grant of personal hearing the extension of Show cause notice;
- (c) That the amendment to the provisions of Section 110(2) of the Customs Act, 1962 by Finance Act, 2018 will not alter the situation as for grant of personal hearing before extending the time limit for issuance of Show cause notice;
 - (d) That the Commissioner has totally ignored the law laid down by the Hon'ble Supreme Court of India in the case of I.J. Rao, Assistant Collector of Customs vs. Bibhuti Bhushan Bagh - 1989 (42) ELT 338 (SC) wherein it has been held that extension of six months period for issuance of Show Cause Notice cannot be done by the Commissioner without hearing the appellants;
 - (e) That the Apex Court had also in the case of Harbans Lal vs. Collector of Customs reported as 1993 (67) ELT 20 (SC) has held that by extending the time limit under Section 110(2) of the Customs Act, 1962 owner of seized goods is entitled to notice because the seized goods on the expiry of six months are required to be returned to him and if that period was to be extended, he has vested right to be heard;
 - (f) Learned Counsel further relied on the case of Assistant Collector of Customs vs. Charan Das Malhotra - 1983 (13) ELT 1477 (SC), Sardar Kulwant Singh vs. CCE & Cus and Ors - 1981 (8) ELT 3 (Del.) and Tribunal decision of Delhi Bench in the case of Swees Gems & Jewellery & Aardhya Impex vs. CGST & CE, Jaipur-I, Final Order No. 50283-50284/2019 dated 21.02.2019.

4. Learned Authorised Representative relies on the impugned order. He pointed out that after the amendment to Section 110 of the Customs Act, 1962 the law is substantially changed. He pointed out that the said provisions, after amendment, have been examined by the Hon'ble Rajasthan High Court in their judgment in the case of CC (Preventive) Jodhpur vs. Swees Gems and Jewellery – 2019 (368) ELT 455 (Raj.). He pointed out that the decision of Ahmedabad bench in the case of M/s. Gastrade International (Order No. A/10956/2019 dated 03 June 2019) passed by relying on the decision of Delhi Bench in the case of *Swees Gems & Jewellery* vide Final Order No. 50283-50284/2019, has been set-aside by the Hon'ble Rajasthan High Court and therefore, no reliance can be placed on the decision of Ahmedabad Bench in the case of Gastrade International (*supra*).

5. We have gone through the rival submissions. We find that the primary issue is if the Commissioner of Customs can exercise powers granted to him under Section 110(2) of the Customs Act, 1962 without issuance of show cause notice and without granting hearing to the appellant. The appellants have essentially relied upon the decision of the Tribunal in the case of Swees Gems and Jewellery which in turn relied on various decisions of High Courts and Supreme Court. It is seen that those decisions of High Courts and Supreme Court which have been relied on by the Tribunal in the case Swees Gems and Jewellery pertains to unamended Section 110(2). We find that the said decision of Tribunal in the case of Swees Gems and Jewellery has been set-aside by the Hon'ble Rajasthan High Court with following observations:-

11. Before proceeding to analyze the parties’ rival submissions, it would be useful to extract the pre-amended law, and the provision of Section 110(2) after the amendment. They are set out, in a tabular manner, as follows:

Provisions prior to amendment of proviso to Section 110(2)	Provisions subsequent to amendment of proviso to Section 110(2)
(2) Where any goods are seized under sub-section (1) and no notice in respect 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 Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding six months.	(2) Where any goods are seized under sub-section (1) and no notice in respect 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: 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”.

12. The Supreme Court in the Asstt. Collector of Customs and Ors. v. Charan Das Malhotra, AIR 1972 SC 689 1983 (13) E.L.T. 1477 (S.C.) considered the interplay between Sections 110 and 124 of the Customs Act and held as follows:-

“Section 124 provides that 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 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. The Section 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.”

13. This view was again applied and followed in J.K. Bardolia Mills v. Dy. Collector and Ors., 1994 (5) SCC 332 = 1994 (72) E.L.T. 813 (S.C.). Thus, there is no time limit for issuing a show cause notice, under Section 124 of the Customs Act. However, in case a show cause notice is not issued, for some reason, Section 110 would operate. Section 110(2) states that goods cannot be detained for more than six months, unless a show cause notice (i.e. under Section 124) is issued; the proviso clothes the Revenue with the power of extending the period by another six months. Under the pre-amended law, the power under the proviso could be exercised, “for sufficient cause”. This was the subject of interpretation in I.J. Rao (supra). The Supreme Court, held, in that decision, that:

“There is no doubt that the words “on sufficient cause being shown” in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the extension, and in this behalf he would probably want to establish that the investigation is not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be effected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceeding. In the other words, the issue is whether there is a right in a person from whose possession goods are seized and which right may be prejudiced or placed in jeopardy unless he is heard in the matter. It cannot be disputed that Section 110 sub-section (2) contemplates either notice (within six months from the date of seizure) to the person from whose possession the goods have been seized in order to determine whether the goods should be confiscated or the restoration of the goods to such person on the expiry of that period. If the notice is not issued in the confiscation proceedings within six months from the date of seizure the person from whose possession the goods have been seized becomes immediately entitled to the return of the goods. It is that right to the immediate restoration of the goods upon the expiry of six months from the date of seizure that is defeated by the extension of time under the proviso to Section 110(2). When we speak of the right of the person being prejudiced or placed in jeopardy we necessarily envisage some damage or injury or hardship to that right and it becomes necessary to inquire into the nature of such damage or injury or hardship for any case to be set up by such person must indicate the damage or injury or hardship apprehended by such person.

In the present case, one possibility is that the person from whose possession the goods have been seized may want to establish the need for immediate possession, having regard to the nature of the goods and the critical conditions then prevailing in the market or that the goods are such as are required urgently to meet an emergency in relation to a vocational or private need, and that any delay in restoration would cause material damage or injury or hardship either by reason of some circumstance special to the person or of market conditions or of any particular quality of requirement for the preservation of the goods. But it will not be open to him to question whether the stage of the investigation, and the need for further investigation, call for an extension of time. It is impossible to conceive that a person from whose possession the goods have been seized with a view to confiscation should be entitled to know and to monitor, how the investigation against him is proceeding, the material collected against him at that stage, and what is the utility of pursuing the investigation further. These are matters of a confidential nature, knowledge of which such person is entitled to only upon the investigation being completed and a decision being taken to issue notice to show cause why the goods should not be confiscated. There can be no right in any person to be informed midway, during

an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a person, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months. In the normal course, notice must go to such person before the expiry of the original period of six months.

It is true that the further period of six months contemplated as the maximum period of extension is a short period, but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized. We have said that notice must go to the person, from whose possession the goods have been seized, before the expiry of the original period of six months. It is possible that while notice is issued before the expiry of that period, service of such notice may not be affected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires. Service of the notice may be postponed or delayed or rendered ineffective by reason of the person sought to be served attempting to avoid service of notice or for any other reason beyond the control of the Customs authorities. In that event, it would be open to the Collector, if he finds that sufficient cause has been made out before him in that behalf to extend the time beyond the original period of six months, and thereafter, after notice has been served on the person concerned, to afford a post decisional hearing to him in order to determine whether the order of extension should be cancelled or not. Having regard to the seriousness and the magnitude of injury to the public interest in the case of the illicit importation of goods, and having regard to considerations of the damage to economic policy underlying the formulation of import and export planning, it seems necessary to reconcile the need to afford an opportunity to the person effected with the larger considerations of public interest.”

14. The reasoning of the Supreme Court was primarily based on the fact that issuance of a show cause notice (i.e. under Section 124) is part of a quasi-judicial or judicial act and consequently, the delay in its issue can at times, be prejudicial to the interests of the party or importer, who has an interest in the goods. The observations of the Court are pointed, with respect to the nature of the goods and the information about their condition, which the party likely to be affected might possess. This Court is also alive to the fact that Section 110 confers a general power of detention of goods: thus, all classes of articles, including perishables, such as foodstuffs, pharmaceuticals and other goods having limited shelf life can be implicated. Yet, the Court has to also be alive to the fact that I.J. Rao (supra) was premised upon the phraseology of Section 110(2), and the power of extension being conditioned “*on sufficient cause being shown*” which was the subject matter of the Court’s discussion. Now, the amendment has done away with that expression; the power to extend (the period of detention) after amendment states that, “*if the 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.”

15. The change in the statute, in the opinion of this Court, is a significant one. The previous provision required the Commissioner to show sufficient cause, which meant that such cause had to be based on objective considerations. However, the amended provision merely requires the Commissioner to record the reasons in writing and “inform the person from whom such goods were seized before the expiry of the period so specified”. In this Court’s considered view, the amended provision deliberately sought to overbear the previous view that a notice before extension was necessary. Now two conditions are to be satisfied : one, the Commissioner has to record his reasons in writing, why the extension is necessary, and two, *inform the person from whom such goods were seized before the expiry of the period so specified*. The latter condition is equally important, in the opinion of this court, because it is a pre-requisite for the exercise of the power of extension. The pre-amended provision was silent on this aspect.

16. There are other reasons for this Court to hold that the amendment brought about a radical change in the law. Parliament had knowledge - or is deemed to have knowledge of the existing state of law, which required notice, before extension. Therefore, the change of terminology is significant; the amendment has resulted in only two conditions, being insisted upon-primarily that the Commissioner should record his reasons, before the expiry of the period of limitation and should inform those reasons to the party concerned.

17. Besides, this Court also notices that Parliament, aware of difficulties that might be faced by importers of goods, which might be seized, also provided, through an amendment in 2006, the facility of provisional release. Section 110A, enacted for this purpose, reads as follows:

“110A. Provisional release of goods, documents and things seized pending adjudication. — Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.”

18. These developments, in the opinion of the Court, resulted in a complete change of law, on the aspect. Section 110(2) too has not remained unaffected; a second proviso has been added, which states that :-

“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”.

19. The effect of these amendments, is that the rigour of unamended Section 110(2) has been softened. Now, a person, whose goods are detained, can claim provisional release. At the time when I.J. Rao was decided, that facility was not available. Seen in the context of these facts, it is apparent that a textual reading of Section 110(2) would lead one to conclude that no separate notice is necessary, before extending the period of limitation by a further six months (for issuance of show cause notice); the authority has to record reasons in writing, which of course, should be based on materials and inform the concerned party about the extension before the expiry of the first period of six months. At this stage, it is necessary to also notice that even in I.J. Rao (supra) the Court recognized that not all reasons can be disclosed, because investigative processes and information gathering can be confidential.

20. In view of the foregoing discussion, this Court is of opinion that the impugned order cannot be sustained. The answer to the question of law framed, is in the affirmative; the impugned order of CESTAT is hereby set aside and the appeals are allowed. All pending applications are disposed of.

6. We find that all the arguments raised by the appellant have been considered by the Hon'ble Rajasthan High Court and duly answered in the observations above. Therefore, we find no merit in the arguments of the appellants.

7. It is also seen that the decision of Ahmedabad Bench in the case of Gastrade International (supra) was essentially based on the Delhi Bench of Tribunal decision in the case of Swees Gems and Jewellery (supra) which has been upset by the Hon'ble Rajasthan High Court. Thus, the decision of the Tribunal in the case of Gastrade International (Customs Appeal No. 10497 of 2019) is no longer a valid precedence on this issue.

8. In view of the above discussion, relying on the decision of Hon'ble Rajasthan High Court in the case of Swees Gems and Jewellery (supra), the appeal is dismissed.

(Order pronounced in the open court on 24.02.2020)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)