

NOTICE UNDER SECTION 130 (1) OF THE CUSTOMS ACT, 1962/35-C(1) OF THE  
CENTRAL EXCISE SALT ACT, 1944.

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL  
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI - 110066.

F. No. C/18/2000-NB(SM) Dated 16/3/2001

From : The Registrar,  
CEGAT, New Delhi.

To, M/s B.R. Metals Ltd.,  
5852/53, Basti Harphool Singh  
(2nd Floor) Sadar Bazar, Delhi - 110006.

In the Matter of :-

M/s B.R. Metals Ltd.,

APPELLANT

Vs.

CC New Delhi

RESPONDENT

I am directed to transmit herewith a certified copy of Final Order No. A/366/2001-NBC

Dated 14/3/2001

passed by the Tribunal under Section 129-B of the Customs Act, 1962, 35-C(1) of the Central  
Excise & Salt Act, 1944.

Copy to :-

1. Respondent : CC New Delhi (Tughlaqabad) Assistant Registrar  
Chief CC, New Delhi NB(SM)
2. Advocate/Consultant : Shri C. Hasi Shankar, Adv.  
46, Bank Enclave, Delhi - 110092
3. C. C./C.E. (APPEAL) : New Delhi
4. Asst.. Registrar, ERB, CEGAT, Calcutta.
5. Asst.. Registrar, SRB, CEGAT, Chennai.
6. Asst.. Registrar, WRB, CEGAT, Mumbai.
7. Director of Publication, Customs & Central Excise, C. R. Building, I.P. Estate, New Delhi.
8. Centax Publication (P) Ltd. 1512, Bhisham Pitamah Marg, Opp. Sachedva P. T. College,  
Defence Colony, New Delhi.
9. M/s. Cen-Cus Publication, C-7, Main Market, Vasant, Vihar, New Delhi.
10. ~~M/s. Central Law Institute, 5989, Ballimaran, P. B. 1259, Delhi.~~
11. ~~M/s. 21st Century Publication, Office No. 2, and Mazzen Floor, Ansal's Satyam Raj Nagar,  
Distt. Central, Ghaziabad-201001.~~
12. M/s. Deeparchie Publications, M-93, Marg-44, Saket, New Delhi.
13. The U.S. (Judicial), CBEC, Min. of Finance, Dept.. of Revenue, North Block, New Delhi.
15. J. C. D. R.
16. S. D. R.
17. Library, CEGAT, New Delhi.
18. Bar Association.
19. Hon'ble Members (1) Shri P. G. Chacko; M(T)  
(2)
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Asst. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal  
New Delhi** NORTHERN BENCH (SM)

APPEAL NO. C/18/2000. OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

BKG/CC/ICD/TKD/70/99 DATED: 17.11.99

PASSED BY..... COMMISSIONER OF CUSTOMS,

..... NEW DELHI.

Date of decision... 14.3.2001

..... M/s B.R.METALS LTD. - ..... APPELLANT (S)

Represented by Sh./Smt. ~~xxx~~ C.HARI SHANKAR,

**VERSUS**

..... COMMISSIONER OF CUSTOMS, NEW DELHI - ..... RESPONDENT (S)

Represented by Sh./Smt. ~~xxx~~ S.C.PUSHKARNA,

..... JDR.

CORAM:  
SHRI P.G.CHACKO, MEMBER (J).

Per..... P.G.CHACKO:

*FINAL* To be referred to the Reporter or ~~not~~  
ORDER NO. A/366/01/NB (P/m)

The brief facts of the case are as follows:

2. The appellants imported copper wire bars under a contract entered into between them and their US suppliers viz. C.N.A.Metals Inc. The material was to be supplied in 4 containers each and the place of delivery was the Inland Container Depot (in short, ICD),

Tughlakabad, Delhi. The proposed date of shipment was April/May 1999. As per the Bills of Lading, which accompanied the goods, C.N.A.Metals Inc. was the consignor and the goods were to be consigned to the order of the shipper. The Port of Discharge was shown as Nhava Sheva, India. On 06.05.1999 and 08.05.1999, the Shipping Agent M/s Container Marine Agencies Pvt. Ltd. applied to the Assistant Commissioner, Import Department, J.N.P.T., Mumbai, for amendments in the Import General Manifest (in short, IGM) No.1051 dated 05.04.1999 relating to the above consignments of copper wire bars. The amendment sought for in the application dated 06.05.1999 was in relation to the weights of the containers. Such amendment would result in a change of total weight from 80.90 MT to 108.52 MT. This amendment was allowed by the Assistant Commissioner on 06.05.1999 itself. The amendment sought for in the application dated 08.05.1999 was with regard to the name of the consignee. The name shown in the IGM as 'Hindustan Overseas' was sought to be amended as 'B.Ş.Metals Ltd.' This amendment was allowed on 11.05.1999. The Shipping Agent carried out the amendments in the IGM and requested the Assistant Commissioner, ICD, Tughlakabad to amend his records accordingly. Subsequently, the appellants, with the Assistant Commissioner's permission, filed Bills of Entry citing themselves as importers. Bills of Entry were assessed by the Customs authorities and the appellants paid duty accordingly.

2.2 After clearance, by the appellants, of the first consignment covered by one of the Bills of Entry, a team

of Customs officers visited the appellants' godown, searched the destuffed goods, recorded statements of officials of the appellant-company and seized the consignment under a Panchnama under Section 110 of the Customs Act on the ground that the goods were marked as of Russian make, but the appellants had shown the country of origin as Netherlands in the Bill of Entry. This seizure was on 22.05.1999. Subsequently, the remaining consignments which were still under Customs custody were also examined by the officers in the presence of the Managing Director of the appellant-company and those goods were also placed under seizure, though on a different ground viz. that the goods were not covered by the Bills of Entry filed by the appellants in respect of the consignments. This seizure took place on 24.05.1999. Thereupon, the appellants, by themselves or through Counsel, made repeated requests to the Directorate of Revenue Intelligence (in short, DRI) for release of the seized goods, but the DRI kept on adjourning hearings in the matter from time to time. While so, the Commissioner of Customs reviewed the Assistant Commissioner's orders for amendments of the IGM and, pursuant to such review, the Department filed appeal with the Commissioner of Customs (Appeals) against the orders of the Assistant Commissioner.

2.3 While such appeal was pending, the Department wanted to confiscate the assessed goods on various grounds, but they could not issue any show-cause notice for the purpose under Section 124 of the Customs Act within the period of six months stipulated under Section

110(2) of the Act. The Commissioner, therefore, wanted to extend the time for issue of show-cause notice by a further period of six months in exercise of his power under the proviso to Sub-section 2 of Section 110 of the Act. For this purpose, the Commissioner issued notice dated 12.11.1999 to the appellants asking them to show cause why the time for issuance of show-cause notice for confiscation of the seized goods should not be extended upto 21.05.2000 for the purpose of completing investigation including overseas enquiries relating to the importation of the consignments in question. The appellants, in their reply to this notice, submitted that they were not at fault as far as the importation of the goods or the clearance of the goods was concerned. They strongly objected to the proposed extension of time for issuance of show-cause notice for confiscation. The Commissioner passed order dated 17.11.1999, after hearing the appellants, extending the time for issue of show-cause notice for confiscation of the seized goods by a further period of six months upto 21.05.2000. This order of the Commissioner is under challenge in the present appeal.

3. I have carefully examined the records and heard both sides.

4. Ld. Advocate Shri C.Hari Shankar, for the appellants, submitted that the time for issue of show-cause notice for confiscation of the seized goods was extended on two grounds namely: (i) The decision of the Commissioner (Appeals) in the appeal filed by the

...5.

Department against the orders of the Assistant Commissioner for amendment of the IGM was still being awaited; and (ii) The investigation into the importation of the goods could not be completed before 21.11.1999 and the same was going on. In this connection, ld. Advocate submitted that the appeal pending before the Commissioner (Appeals) was not any appeal against the Assistant Commissioner's orders dated 06.05.1999 and 11.05.1999 for amendments of the IGM, but the same was an appeal against order No.S/3-Gen-108/99Imp dated 08.05.1999 passed by the Assistant Commissioner as evidenced by the Review order dated 22.07.1999 passed by the Commissioner of Customs (vide pages 63 to 65 of the paper book in the present appeal). He, therefore, contended that the plea of pendency of appeal before the Commissioner (Appeals), as raised in the impugned order for extension of time was untenable. It was also submitted by ld. Counsel that the Commissioner, in the impugned order, did not specify as to what sort of investigation was going on in relation to the importation. Ld. Counsel, further, argued that the burden was on the Department under the proviso to Section 110(2) of the Act to establish sufficient cause for not issuing show-cause notice for confiscation within the prescribed period of six months, but the Department did not discharge the burden in the present case. He, therefore, prayed for setting aside the impugned order and allowing the appeal.

5. Ld. JDR, Shri S.C.Pushkarna brought on record a copy of the 1st page of faxed letter No.S/3-Gen/108/99Imp

dated 10.02.2001 received by the SDR (CEGAT) from the Office of the Commissioner of Customs, Jawahar Custom House, Nhava Sheva. He also justified the impugned order on the grounds stated therein and prayed for rejecting the appeal.

6.1 I have carefully examined the above submissions. I am unable to accept the submission of Id. Advocate that the appeal pending before the Commissioner of Customs (Appeals) is not against the Assistant Commissioner's orders dated 06.05.1999 and 11.05.1999 for amendments of the IGM filed in respect of the copper wire bars inasmuch as the appellants themselves have admitted pendency of such appeal before the Commissioner (Appeals) as evidenced by the following averments in paragraphs 22 and 26 of the memorandum of appeal:

"On 27.7.99, the Department filed an appeal, before the Commissioner of Customs (Appeals), against the orders of the learned A.C., permitting amendments of the IGM filed in respect of the copper wire bars in issue."

"Id. Commissioner (Appeals) reserved his decision on the appeals, after hearing both sides."

It has been clearly stated in the memo of the present appeal that a personal hearing in the department's appeal aforesaid was conducted by Id. Commissioner (Appeals) on 11.11.99 and that he reserved his decision after such hearing. Therefore, on 12.11.99 when the SCN in question was issued to the appellants by the Commissioner under the proviso to Section 110(2) of the Act, the said appeal of the department was pending with

the Commissioner (Appeals). I have also perused the document produced by Id. DR and find that nothing contained in the document [copy of 1st page of letter No.S/3-Gen-108/99Imp dated 10.02.2001 issued from the Office of the Commissioner of Customs, Jawahar Custom House, Nhava Sheva to the SDR, CEGAT] appears to contradict the above factum of pendency of the Department's appeal before the Commissioner (Appeals) against the Assistant Commissioner's orders for amendments of the IGM.

6.2 I, further, note that, under the proviso to Sub-section 2 of Section 110 of the Customs Act, the Commissioner has power to extend the time for issue of show-cause notice under Section 124 for confiscation of the seized goods beyond six months by a further period not exceeding six months. Such extension of time can be granted on sufficient cause being shown. In the instant case, the reasons cited for extension of time for issue of show-cause notice for confiscation were those stated in paragraph Nos.(12) and (13) of the SCN dated 12.11.99 extracted below:-

"12. Whereas the decision of the Commissioner of Appeals in appeal dated 27.7.99 filed by the Deputy Commissioner of Customs (Import), Jawahar Customs House, Nhava Sheva with Commissioner (Appeals), is awaited, investigation is also on and cannot be completed before 21.11.1999 in view of the international ramification of the case. Some over-seas enquiries which are vigorously pursued are yet to be completed.

13. In order to complete the investigation, it is proposed that the time limit to issue the notice to show cause be extended by a period of six months i.e upto 21.05.2000."

...8.

...9.

It was for ~~assessing~~<sup>determining</sup> the sufficiency of the above reasons that the Commissioner in his quasi-judicial capacity issued the SCN, on 12.11.99, to the party. The appellants availed themselves of the opportunity by replying to the notice and being heard by the Commissioner. In their reply, they objected to the proposed extension of time for issuance of show-cause notice for confiscation of the goods, on the short ground that they were not at fault in relation to the import/clearance of the goods. They reiterated such ground at personal hearing too. Neither in their reply nor in their oral submissions did the appellants contest the specific reasons (vide supra) cited in the SCN dated 12.11.99 for extending time for issue of SCN for confiscation. The specific reasons notified to the appellants were (i) pendency of department's appeal with Commissioner (Appeals) and (ii) ongoing investigations. Since the appellants did not contest these grounds either in their reply to the notice dated 12.11.1999 or in their submissions made at the time of personal hearing before the Commissioner, they cannot, in my view, be heard at this stage to say that the aforesaid two factors cited by the Commissioner as sufficient cause for extending time for issuance of show-cause notice for confiscation of the goods by a further period of six months are totally irrelevant.

6.3 It is evident from the facts of the case that, when the period of six months (prescribed for issue of notice for confiscation of seized goods) from the date of seizure of the impugned goods expired, the appeal of the department against the A.C's orders for amending the IGM

was still pending with the Commissioner (Appeals). Amendment of importer's name and container weights in IGM cannot be brushed aside as irrelevant to the question whether the importation was authorised or not. It follows that the results of the department's appeal aforesaid will have definite bearing on the said question which, in turn, will be determinative of the ancillary question whether the imported goods are liable to confiscation or not. Therefore, in my view, the Commissioner's order extending time for issue of SCN for confiscation by a period of six months can be sustained on the ground of pendency of the department's appeal before the Commissioner (Appeals). The department must be held to have successfully discharged its burden under the proviso to Section 110(2) by showing sufficient cause for the extension of time.

7. In view of the above findings, I uphold the impugned order of the Commissioner and dismiss the appeal.

(P.G.CHACKO)  
MEMBER (JUDICIAL)

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