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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/208 /2009 - CU[DB] Date **21/03/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S DHARAMPAL SATYAPAL LTD.

A-85, SECTOR-2, NOIDA (U.P.)

M/S DHARAMPAL SATYAPAL LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/124/ 2011 CU[DB]** dated 17.03.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62,
NOIDA-201307

2. Adv. / Consult MR. T.R. RUSTAGI, ADV.
SD-84, TOWER APPTS.,
PITAM PURA, DELHI – 110 034.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.C/208/2009-Cus

(Arising out of Order-in-Original No.01/COMM/NOIDA/2008 dated 13.01.2009 passed by the CCE, Noida)

For approval and signature:

Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.Dharmpal Satyapal Ltd. — Appellants

Vs.

CCE, Noida — Respondent

Present for the Appellant: Shri T.R.Rastogi,, Advocate
Present for the Respondent: Shri Sonal Bajaj, DR

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing: 10.03.2011
Date of decision: 17-3-2011

Final **ORDER NO.** C/124/11

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner dt.13.1.09 by which the period for issue of show cause notice was extended by six months in terms of provisions of Section 110 (2) of Customs Act, 1962 made applicable to central excise matters vide notification no.68/63-CE dt. 4.5.63.

2. Heard both sides.

3. The relevant facts in brief are that the appellants are engaged in the manufacture of pan masala containing tobacco (gutka of various brands) in different factories belonging to them. On the basis of intelligence about suppression of production, and clandestine removal, the premises of the appellants and connected premises including the residential premises of the director of the appellant company and other persons associated with the appellant company were searched on 16.7.08. From the residence premises Shri Ajay Gupta, Shri Vipul Kumar Gupta, Shri Subhash Chand Gupta and Shri Puesh Kumar Gupta, cash amounts of Rs.9 lakhs, 47 lakhs, 4 lakhs and 1.5. lakhs respectively were found and the same were detained under a panchmana dated 16.7.08. The detention was converted into seizure by a communication dated 5.1.09 on the reasonable belief that the said cash amounts were the sale proceeds of clandestinely removed goods and the same were liable to confiscation. A show cause notice dt.6.1.09 was issued by the Additional Director General DGCEI answerable to Commissioner of Central Excise, Noida directing the appellant to show cause why the period of six months provided for issue of show cause in respect of seized currency should not be extended as provided under Section 110(2) of Customs Act, 1962 as applicable to excise matters. The appellant in their reply dt.12.1.09 filed in the form of affidavit, submitted that neither seized cash of Rs.61.50 lakhs nor any of the seven computers or one pen drive or two floppies seized from the possession of the seven different persons from the residence at 43/1, Rajpura Road, Civil Lines, Delhi on 16.7.08 belonged to them. It was also submitted that Shri Subhash Chand Gupta, Shri Vipul Gupta,Shri Amit Gupta and Shri Shobhit Gupta were not connected with

their company. The commissioner after hearing the representative of the appellant on 12.1.09 passed the impugned order dt.13.1.09 extending the time by six months.

4. Learned Advocate assailed the order of the commissioner on various grounds the important of which are as follows:

(a) the seized currency did not belong to the appellant company. The currency has been seized from the residential premises from different persons and two of them namely Subhash Chand Gupta and Vipul Gupta are not even directors of the appellant company.

(b) In view of the above, show cause notice proposing extension of time under section 110(2) should have been issued to the persons from whose residence the currency has been seized and should have not been issued to the appellant company.

(c) The show cause notice has been issued by the additional Director General of Central Excise Intelligence who himself has ~~power~~ the power of the Commissioner and if it was deemed necessary to extend the time limit, the show cause notice should have been issued answerable to the said Additional Director General of Central Excise Intelligence.

(d) The Commissioner of Central Excise, Noida has no jurisdiction in the present matter and it is the Commissioner of New Delhi who has got the jurisdiction.

(e) Show cause notice proposing extension of time limit under section 110(2) has been issue practically towards the end of the period provided for issue of show cause notice for proposing confiscation.

(f) Relying on the decision of Honourable Supreme Court in the case of I.J.Rao, Assistant Collector of Customs vs. Bibhuti Bhushan Bagh reported in 1989 (42) ELT 338 (SC), he submits that the extension ordered by the commissioner without affording opportunity to the concerned persons is liable to be set aside. As no notice has gone to the persons from whose possession the currency was seized before the expiry the original period of six months, the order deserved to be set aside.

5. Ld.SDR defended the order of the Commissioner. He submits that searches were made in pursuance of intelligence about concealment of incriminating documents as well as sale proceeds of contraband goods in the residential premises of persons associated with the appellant company. At the time of search on 16.7.08, the eldest member of the joint family and others pleaded ignorance about the source of cash available in the residence. The officers, in the light of the intelligence received by them, entertained a reasonable belief that the currency was sales proceeds of clandestinely removed goods and effected the seizure. The representatives of the appellant company were not cooperating in the investigation and therefore the investigation could not be completed within the prescribed period of six months. Therefore, the order of the commissioner in extending the period of six months provided for issue of show cause notices proposing confiscation of the seized by another six months has been validly made.

6.1 We have carefully considered the submissions from both sides and perused the records. The appellants are manufacturers of excisable goods. The officers, on the basis of specific intelligence indicating suppression of production and clandestine removal of the excisable goods, searched various premises including the residential premises of the persons connected to the appellants company and their group concerns. Seizure has been effected by the seizing officers under a reasonable belief that the currency is sale proceeds of non duty paid goods. Apparently, the investigation could not be completed within the period of six months and the department has claimed that the delay was attributable to non cooperation of the persons concerned with the appellant company. Whether the seized currency is part of the sale proceeds of excisable goods cleared without payment of duty by the appellant company is an issue to be decided in the concerned adjudicating proceedings.

6.2 The appellants are submitting that the currency seized does not belong to them. It appears that nobody has come forward to claim the currency. The ownership of the currency and source of currency were matters for investigation. Both sides agree that the investigation has since been completed and show cause notice issued inter alia proposing confiscation of impugned currency, has since been issued.

6.3 The decision of the Supreme Court relied upon by the appellant relates to a case where the seized goods were claimed by a person and no show cause notice having been issued to the persons from whose possession the goods have been seized before the expiry of original period of six months. In the present case, the Commissioner has merely extended the period for issue show cause as provided under section 110 (2).

6.4 It is to be noted that while the appellant company submitted that the currency did not belong to them, None of the persons, Subhas Chand

Gupta, Shri Vipul Kumar Gupta, Shri Amit Gupta and Shri Shobhit Gupta from whose residential premises, the currency was sized are in appeals before us claiming any relief.

6.5 In view of the above, we do not find any reason to interfere with the order of the commissioner which merely extended the period for issue of show cause notice in respect of seized currency for a further period of six months beyond 15.1.09.

6.6 In the light of the above submissions, we are not able to agree with the submissions of learned advocate that there was no justification ~~the~~ for extending the time limit.

6.7 Our observations are merely to consider the limited issue as to whether there was justification for extending the period prescribed for issue of show cause notice, We uphold the decision to extend the time limit. The parties are free to make submissions on various other issues before the adjudicating authority when the mater is taken up for adjudication by him.

6.8 The appeal is dismissed.

(Pronounced in the open court on 17-3-2011)

(S.S.KANG)
VICE PRESIDENT

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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