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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE Appeal Branch

Appeal No. : E/1206/2012-EX[DB], E/1207/2012-EX[DB], E/1208/2012-EX[DB], E/1210/2012-EX[DB]
Dated: **24/05/12**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Hytech Earthmoving Engineers
Plot No. 45-d, Hsiidc, Sector-31, Faridabad (haryana)

Hytech Earthmoving Engineers (Appellant)

VS

C.C.E.-Delhi-iv (Respondent)

I am directed to transmit herewith a certified copy of **Final Order No.A/615-618 EX[DB]** dated **17/5/12** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E.-Delhi-iv
NEW CGO COMPLEX...NH-IV... NIT... FARIDABAD, DELHI,121001

2. Advocate(s) / Consultant(s):
ABHISHEK PREEK
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3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. OFFICE COPY
13. GAURD FILE
14. UMESH SONI
15. SHAKUNTALA SONI
16 KALASH SONI

PLOT NO. 54-d,
HIIDC Sectre-31
Faridabad(HR)

ASSISTANT REGISTRAR
EXCISE APPEAL BRANCH

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Appeal No.1206-1208 & 1210 of 2012

(Arising out of Order-in-Original No.32/DM/ADJN/CE/2011-12 dt.5.3.12 passed by the CCE & C,Delhi-IV, Faridabad)

Date of Hearing/Decision: 17.05.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Hytech Earthmoving Engineers — Appellants
Umesh Soni
Shakuntala Soni
Kailash Soni

Vs.

CCE, Delhi-IV, Faridabad — Respondent

Present: Shri Abhishek Pareek, Advocate for the Appellant
Present Shri R.K.Verma, AR for the Appellant

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL **ORDER No.** A/615-618/2012-EX (BR)

Per: Justice Ajit Bharihoke

M/s.Hytech Earthmoving Engineers and its partners Shri Umesh Soni, Smt.Shakuntala Soni and Shri Kailash Soni have preferred above referred four separate appeals against the impugned order of the Commissioner of Central Excise & Customs dt.5.3.2012 whereby he extended the stipulated period of six months for issue of show cause notice as required under section 110 (2) of Customs Act, 1962 read with section 112 of the Central Excise Act, in respect of the goods and Indian currency seized from the business premises and residential premises as also bank locker of the appellant vide panchnama dt.13.09.2011.

2. Briefly put the facts relevant in these appeals are that on 16.09.2011, officials of the excise department conducted search at the premises of the appellant M/s.Hytech Earthmoving Engineers and residential premises of the partners of the appellant's firm as also the office of the transporters M/s.Bhoruka Roadlines. During the search unaccounted stock of parts earthmoving equipment worth of Rs.1,06,26,669/- was seized on the reasonable belief that the those goods were manufactured and kept by the appellant in contravention of the provisions of Central Excise Act for clandestine clearance. Besides those goods, a computer belonging to the appellant's firm was also seized. On the same day, search was conducted at the residential premises of the partners of the appellant house no.345, Sector 17, Faridabad which resulted in recovery and seizure of Indian currency of Rs.3,75,64,500/- which the appellant could not account for. The said cash was also seized on the reasonable belief that it was the sale proceeds of excisable goods cleared without payment of duty. Similarly, on 13.09.2011, a sum of Rs.14,98,000/-, gold jewellery and gold ginni weighing 1570 gms were seized.

3. on 04.11.2011, the appellant applied for provisional release of seized goods and those were released by the jurisdictional Assistant

Commissioner/Deputy Commissioner, Delhi-IV Commissionerate Faridabad on 04.11.2011.

4. Section 124 of the Customs Act, 1962 provides that no order for confiscation of any goods or imposing any penalty shall be made against the person concerned unless such person is served with notice giving ground on which confiscation is proposed and giving reasonable opportunity of being heard.

5. Section 110 (1) of the Customs Act, 1962 empowers the proper officer to seize goods if has reason to belief that such goods are liable to confiscation under section 110 (2) of the Customs Act, 1962 provides that if the goods are seized on suspicion under section 110 (1) of the Customs Act, 1962 and no show cause notice has been served upon the person concerned the goods are liable to be returned to the person from whom those were seized. Proviso to section 110 (2) of the Customs Act,1962 empowers the Commissioner of Customs to extend the period of issue of show cause notice under section 124 of the Customs Act, 1962 by six months if there is sufficient cause.

6. The Commissioner before expiry of six months from the date of seizure of aforesaid goods, computer and Indian currency served the appellant notice calling upon him to show as to why the period of six months as required under clause (2) of section 110 of Customs Act, 1962 provided issue of show cause notice may not be extended by another six months. The appellant contested the notice but the Commissioner vide order dt.5.3.2012 extended the stipulated period

of six months by another six months in terms of above referred proviso to clause (2) of section 110 of Customs Act, 1962.

7. Shri Abhishek Pareek, learned Advocate appearing for the appellants submits that the impugned order is not sustainable in law because the Commissioner has arbitrarily invoked the proviso to section 110 (2) of Customs Act, 1962 without actually considering whether sufficient cause existed for extending the period of issue notice by six months. It is also submitted that the impugned order is non speaking and it does not address the written submission of the appellant. In this regards, the appellant has relied upon the judgement of the Tribunal in the matter of Water Trading Corporation vs. CC, Calcutta-2003 (160) ELT 323 and Rajasthan Transformers and Switchgear vs. Collector of Central Excise - 1993 (68) ELT 626. Learned Counsel further submits that the adjudicating authority erred in observing that sole active partner of the appellant's company was not available for examination during his detention in judicial custody as concerned Chief Metropolitan Magistrate did not allow the official of the department to record the statement. It is also contended that not only the partners of the appellant's firm but also supplier/buyer and the employees of the appellants appeared before the authorities in pursuance of the summoned issued to them. As such, there could be no question of non co-operation in the investigation of the appellant. It is further contended that the Commissioner has wrongly observed that the data from the CPU of the computer seized is yet to be retrieved. Learned Counsel contended that the data was retrieved from the CPU and panchnama

dt.15.11.2011 in this regard was prepared. It is also contended that summoning of various customers of the appellant for the purpose of investigation, has no bearing on the seizure of goods and Indian currency. Thus, learned Counsel summed up that the impugned order has been passed arbitrarily ignoring the facts. As such, it is liable to be set aside.

8. Shri Sunil Kumar, learned Authorised Representative for the respondent on the contrary has argued in support of the impugned order. He has reiterated the line of reasoning adopted by the Commissioner for extension of period of limitation.

9. We have considered the rival contentions and perused the records.

10. The main question to be answered in these appeals is whether or not there was sufficient cause for extending the period of issue of show cause notice as contemplated by the proviso to clause (2) of section 110 of Customs Act, 1962. Perusal of the show cause notice dt.28.2.2012 for extending of time of show cause notice would show reason given for the proposed extension of period of show cause notice was that the data from the CPU seized from the factory of the appellant's firm could not be retrieved due non cooperation of appellant Shri Umesh Soni who despite of service of summon failed to appear on the pretext of some urgent work. Another reason to justify to extend the period of issue of show cause notice is that the investigation could not be completed due to non cooperation by the appellant. We note from the impugned order that the

Commissioner concerned was satisfied that the delay in completing the investigation resulted due to non cooperation by the appellant. Thus, we do not find any infirmity in the impugned order which may call for interference by the Tribunal, particularly when, the learned Counsel for the appellant could not explain the source of confiscated goods, Indian currency recovered from the appellants in answer to our query. The fact, that the appellants have not come forward to explain the source of the seized goods and the Indian currency is clear indication of non cooperation by the appellant. In view of the above, it is prima facie evident that further investigation is required to verify whether or not seized goods and Indian currency are the result of clandestine removal of excisable goods by the appellant. Thus, we do not find any infirmity in the impugned order extending the time of issue of the show cause notice.

11. In view of the above, we find no merit in the appeals filed by the respective appellants. Accordingly, the appeals are dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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