IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/56846-56848/2013-CU(DB)

[Arising out of Order-in-Original No. 40/2012 dated 18.12.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Indus Chemitex Ltd.
M/s. Sajjan Kumar
M/s. Rajeev Goel **....Applicants**

Vs.

C.C.E. New Delhi (ICD TKD) **....Respondent**

Appearance:

Shri Rajesh Yadav, Advocate for the Appellant
Shri K. Poddar, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 06.03.2017

FINAL ORDER NO. 52244-52246/2017-CU(DB)

Per Archana Wadhwa:

After hearing both the sides duly represented by Shri Rajesh Yadav, Advocate for the Appellant and Shri K. Poddar, DR for the Respondent, we find that they filed shipping bills for export of fabrics on 18.08.2011 and on 13.09.2011. The same were detained and seized by the Customs Officers on 25/26.08.2011 and 30.09.2011 on the allegations of over valuation.

2. In as much as the show cause notice under section 124 was not possible to be issued within the period of six months, a show

cause notices dated 09.02.2012 was issued to the appellant in terms of section 110 (2) of the Customs Act proposing extension of the period for issuance of the show cause notice under section 124 upto 24.08.2012. The said show cause notice was adjudicated by the Commissioner vide his order dated 23.12.2012, extending the period for issuance of regular show cause notice under section 124 by six months i.e. upto 24.08.2012.

3. The said order of the Commissioner was put to challenge by the appellant before Tribunal, who vide its order dated 19.06.2012 set aside the same and remanded the matter to Commissioner for fresh decision, after observing the principles of natural justice. The remand kept pending at the Commissioner level, who took up the matter only on 18.12.2012 and vide his present impugned order observed that the show cause notice has already been issued on 23.08.2012 and as such the present extension being granted by him would relate back to 23.02.2012 when the first extension order was passed. Being aggrieved with the said order of Commissioner, the appellant is in appeal.

4. The main grievance of the appellant is that when the show cause notices under section 124 of the Customs Act was issued on 23.08.2012, there was no valid order of extension passed in terms of section 110 (2) of the Customs Act in as much as the same was already set aside by the Tribunal. As such reference to the earlier extension order in the show cause notice issued on 23.08.2012 was factually incorrect. Further, they have submitted that the present order of extension under section 110 (2) stands passed by the

Commissioner on 18.12.2012 i.e. after expiry of one year from the actual date of seizure. By drawing our attention to the provisions of section 110 (2), Ld. Advocate submits that the show cause notices under section 124 is required to be issued within six month of the seizure of the goods and on sufficient cause being shown, the Commissioner can extend the same by another six months. As such total period granted under the said section is one year from the date of the seizure and the present impugned order passed by the Commissioner, extending the period is even beyond the period of one year from the date of the seizure and as such cannot be upheld on that ground.

5. Ld. DR appearing for the Revenue submits that while remanding the matter to the Commissioner there was a direction to the appellant to appear before him on 02.07.2012. The appellant did not adhere to the said direction of the Tribunal and approached the Commissioner only on 24.07.2012 for the first time. It is in this scenario that the Commissioner could not pass the extension order well within time.

6. After appreciating the factual position as also the submissions made by both the sides as also the provisions of section 110 (2), we note that the said section provides for extension for issuance of show cause notice under section 124 within a period of six months from the date of seizure of the goods. Admittedly, when the show cause notice in terms of section 124 was issued on 23.08.2012 there was no valid order of extension in as much as the same was set aside by the Tribunal on 19.06.2012. The subsequent extension

order was passed belatedly on 18.12.2012, and by that time the show cause notice had already been issued on 23.08.2012. As such it can be safely concluded that the show cause notice having been issued on 23.08.2012 was beyond the period of six months from the date of seizure.

7. On being questioned, Ld. Advocate fairly agrees that the show cause notice issued on 23.08.2012 can be adjudicated by the Commissioner and the effect of belated issuance of the same would only be what the seized goods are required to be returned to the appellant. He also fairly agrees that if the adjudicating authority comes to a finding that the goods are liable to confiscation the same can also be confiscated.

8. In view of the above submission of the Ld. Advocate and in view of the findings arrived at by us, in the preceding para, we direct the authorities to return the seized goods to the appellant. We make it clear that the adjudication proceedings shall continue in terms of the SCN dated 23.08.2012.

9. With the above observations, the appeals are disposed of.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu