

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110066.**

Date of Hearing: 2.1.2019

Date of Pronouncement: 21/02/2019

Appeal No. C/53512-53513/2018-Cus.(DB)

(Arising out of Order-in-Original No. VIII(H)/10/33/2018-4772 & 4777 dated 18.10.2018 passed by the Commissioner of Customs, Jaipur)

M/s Swees Gems & Jewellery
M/s Aaradhya Impex

Appellant

Vs.

CC Jaipur-I

Respondent

Appearance

Sh. Arun Goyal, Advocate - for the appellant

Shri Rakesh Kumar, DR - for the respondent

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 50283-50284/2019

Per: Bijay kumar :

All these appeals have been filed by the appellant on an identical issue and, therefore, being disposed of by this common order. The details of the adjudication order are as under :

S.No.	Bill of Entry	Name of Importer	Date of detention/seizure
1.	6045058 & 6046267 dated 19.4.2018	M/s Swees Gems & Jewelery	26.4.2018/8.8.2018

2.	6044641 & 6045969 dated 19.4.2018	M/s Aardhya Impex	26.4.2018/8.8.2018
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2. In all these cases, the appellants have imported the consignment of rough diamond (precious stone) from Hong Kong and filed Bills of Entry for their clearance through ICD, Jaipur thereof. During the scrutiny of aforesaid Bills of Entry by DRI, it was found that the imported consignment of rough diamond were heavily overvalued and accordingly, those were seized for further investigation on 8.8.2018 under Section 110 of the Customs Act, 1962 (hereinafter referred to as "Customs Act") under the reasonable belief that the same was liable for confiscation under the provisions of Section 111 of Customs Act as the IEC holder were not found to be actual importer and also the truthful declaration were not made as mandated under Section 46 of Customs Act.

3. Show Cause Notices in these cases could not be issued to be appellants before 25.10.2018 i.e. within six months from the date of detention of the goods. The DRI requested to extend the period of issuing show cause notice by another six months under the proviso to sub-section (2) of Section 110 of Customs Act for the reasons contained in letter F. No. DRI/DZU/JRU/19/INT-11/ENQ.23/2018/1866 dated 12.10.2018 to the Commissioner of Customs, Jaipur. In the said letter of DRI, the Commissioner of Customs, Jaipur was appraised of various

difficulties in not issuing the Show Cause Notice within the prescribed time of six months from the date of detention/seizure of the goods. Being aggrieved by these orders, the appellants have filed these appeals before this Tribunal.

4. Ld. Advocate on behalf of the appellant submits that in this case, the appellant were not issued the Show Cause Notice and given opportunity to be heard before extending the time limit for issuance of Show Cause Notice under provisions of Customs Act.

4.1 He referred and relied upon the decision of Hon'ble Supreme Court in the case of ***I.J. Rao, Assistant Collector of Customs Vs. Bibhuti Bhushan Bagh*** - 1989 (42) ELT 338 (SC) wherein it is held that extension of six months period for issuance of Show Cause Notice cannot be done by the Commissioner without hearing the appellants. This decision also refers to the post decisional hearing by the Collector but only in such cases where service of notices evaded. This has not been the case with the appellants. Further even after the impugned order of extension the time limit for issue of Show Cause Notice was passed appellants have not been granted even post decisional hearing although the request for the same was made in the writing by them.

4.2 He also relied upon the decision of ***Harbans Lal Vs. Collector of Customs*** - 1993 (67) ELT 20, wherein it is held that by extending the time limit under Section 110(2) of Customs Act, 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. It was also impressed upon that in case of ***Assistant Collector of Customs & Superintendent, Preventive Service Customs, Calcutta & Others Vs. Charan Das Malhotra*** - 1983 (13) ELT 1477 (SC), wherein it is held that extension of period for retention of seized goods cannot be permitted without sufficient cause and without opportunity of being heard to the person from whose possession goods are seized

4.3 Ld. Advocate relied upon the following cases where similar view has been entertained by the respective Courts :

- (i) ***Chunilal Damani Vs. Collr. of Cus. and C. Ex., West Bengal*** – 2000 (126) ELT 357 (Cal.)
- (ii) ***K.K. Sukhani Vs. Union of India*** – 1999 (110) ELT 505 (Pat.).
- (iii) ***Works of Art (Pvt.) Ltd. and Another Vs. Union of India & Others*** – 1998 (36) ELT 91 (Bom.).

4.4 The Id. Advocate also submitted that the amendment to the provisions of Section 110(2) of Customs Act by Finance Act, 2018, will not alter the situation as for grant of personal hearing before the

extension of Show Cause Notice. He, accordingly, prayed for setting aside the impugned order and allow release of seized goods for the violation of the provisions of Section 110(2) of Customs Act.

5. Ld. AR, on the other hand, supported the impugned order and stated that the provisions of Section 110(2) of Customs Act, after being amended by Finance Act, 2018, wherein 'ON SUFFICIENT CAUSE BEING SHOWN' has been replaced by "FOR REASONS TO BE RECORDED IN WRITING," for extension of time period for a further period not extending six months and inform the person concerned from whom such goods were seized before the expiry of period so specified. He, therefore, argued that in the requirement for issuance of Show Cause Notice before extending the time period by another six months has been done away with and hence there is no infirmity in the order of the Commissioner in these cases. On being asked, he has also made available the investigation file before the Bench. He, thereafter, submitted that in these cases the investigation could not be completed due to the various reasons including the overseas enquiry and hence the investigating agency requested Commissioner to extend the time period for issuance of Show Cause Notice. The Commissioner after applying his mind and considering the surrounding circumstances extended the time period for issue of Show Cause Notice by another six months.

6. We have considered the rival contentions and also perused the case record along with the investigation file submitted before the Bench by Id. AR. In these cases, the issue to be decided is as to whether after the amendment of Section 110(2) of Customs Act by Finance Act, 2018 is there any need for issuance of the Show Cause Notice before the extension is permitted by another six months on the reasonable ground by the Commissioner/adjudicating authority. To resolve the controversy, it will be appropriate to refer the Section 110(2) before the amendment and also after the amendment vide Finance Act, 2018. The same is reproduced as under :

Section 110(2) before	Section 110(2) after
Where any goods are seized under 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:	Where any goods are seized under sub-section (1) and no (2) 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 [Commissioner of Customs] for a period not exceeding six months	[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.

In this context, we also refer to paragraph “163” of FM speech regarding the need for amendment under the Customs Act which is reproduced as under:

“ I also propose to make certain change to the Customs Act, 1962 to further improve ease of doing business in cross border trade, and to align certain provisions with the commitments under the Trade Facilitation Agreement. To smoothen dispute resolution processes and to reduce litigation, certain amendments are being made, to provide for pre-notice consultation, definite timelines for adjudication and deemed closure of cases of those timelines are not adhered to.”

Clause 90 of the Bill seeks, to amend Section 110 of the Customs Act so as to give power to extend the period for issuing Show Cause Notice in case of seized goods by a further period of six months to cases in cases where no order for provisional release of goods has been passed. We find that similar issue has been decided by the coordinate bench of this Tribunal vide Final Order No. 75047-75048/2018 dated 17.1.2019 in the case of **S.R.K. Metal & Industries & Pink Commercial**, wherein it is held as under:

“Our attention was also drawn towards the decision of **Sardar Kulwant Singh vs. Collector of Central Excise and Customs**, wherein it is held that an order extending period of issue of Show Cause Notice under Section 110(2) and 124 of the Customs Act, 1962, without giving an opportunity of being heard to the affected party is illegal. Further, the requirement of issue of Show Cause Notice issued under Section 124 of the Customs Act in such a case was held to be a must relying upon the various judgments referred as above. Relying on these judgments, we find that the seized goods are required to be returned to the person from whom the seizure has been made on the fact of expiry of six months under Section 110 of the Act without extension of time. Regarding the Revenue

contention that with effect of the amendment carried out in Section 110(2) of the Customs Act, the requirement of issuance of Show Cause Notice is dispensed with is without any basis. In fact, we find that after the amendment the Adjudicating Authority has to give the proper reasoning by way of reasoned order after examining the requirement for extension of time period as per sub proviso 2 of Section 110. Question as to whether the person claiming restoration of the goods under Section 110 of Act is entitled to notice before time is extending, this flows from the circumstances that this is a quasi judicial proceeding, and also it goes beyond the doubt that rights of a person are likely to prejudicially affected, he is entitled to opportunity to put forwarded his case before the Adjudicating Authority. Therefore, the person from whom the goods have been seized, is entitled to notice of the proposal before Adjudicating Authority for the extension of original period of the six months under Section 110(2) of the Customs Act subject to the restriction that he is not entitled to the information about the investigation which is in possession of the Investigating Agency as there can be no right in any person to be informed whose goods during the investigation material collected against him and there is no need for maintaining the investigation proceedings. This view has been affirmed in the ***I G Rao case referred***(supra). The provisions of Section 110(2) before and after the amendment is as identical but for "on sufficient cause being shown has been replaced with reasons to be recorded in writing extends such period", for a period not exceeding six months and inform the person from whom such goods were seized before expiry of the said period. Careful analysis of the provision makes it clear that the right of issuance of the Show Cause Notice for the extension of the period of six months as prescribed under said sub-Section of Section 110(1) remains same from which the emanate right of Show Cause Notice to the affected party in furtherance of Principle of Natural Justice as his rights are being prejudicially affected. The amendment will not obliterate the aforesaid position of issuance of Show Cause Notice has discussed above, even after insertion of with new sentence in the provisions of Section 110(2) of the Act. In fact, we are of the view that after amendment not only the Show Cause Notice is required to be issued by the Adjudicating Authority, but he has also to give a reasoned order after hearing the Investigation Officer and also taking view of the affected party from whom seizure has been made as his personal right is being deprived of which emanate from the Section 110(1) of the Act that entitled him to got the goods returned which has been seized from his possession. This is also cleared from statements of objects in the Finance Act as discussed above.

13. In view of above, we are of the opinion that the impugned order is in violation in this provisions of Section 110 of the Customs Act has held in the various decisions discussed above. We have also seen the note sheet order of

the Ld. Commissioner in this case. It is seen from the order that the Commissioner while extending the time period has only gone by the letter of DRI and not put up to him by his office without examining the merits of the such extension and recording his own finding. His finding is only two worded finding which is

'GC issued dated 26/06/2018'

Sd- M Chandra

This proves that there is no independent application of mind by the Commissioner (Port) for the extension of Show Cause Notice even by accepting his assertion that the only requirement is that the Principal Commissioner/ Commissioner of Customs made for the reasons to be recorded in writing, extends such period to further period not extending six months and inform the person from whom the goods are seized. We have also considered the submission made by Ld. Advocate that the aforesaid amendment has been brought with effect from 18/3/2018. Obviously, the amendment will not have its application from the retrospective date. The amendment has not been made with retrospective effect as is evident from the Finance Act, 2018. We also find that in case of **Commissioner of Income Tax (Central-1), New Delhi vs. Vatika Township** [(2014) 0 SCC 670], Hon'ble Supreme Court has held that law enacted in absence of a provision in the statute about the same being with of retrospective effect in the Clause of Finance Act, the amendment will have prospective effect only. In view of that also we find that the impugned order is not sustainable as the new amended provision has been applied for the seizure made during period when the amendment was not there in the statute.

14. In view of above our analysis as above, we are of the considered opinion that there is no legality for dispensing with the Show Cause Notices to the affected party even under the amended provisions of Section 110(2) of the Act. The Adjudicating Authority has erroneously held that this is no need of issue of Show Cause Notice in the cases of extension at hand.

15. Accordingly, we set aside the impugned orders and allow appeals with consequential relief as per law."

7. In view of above, we are of the view that the impugned order is not sustainable and the same are being set aside with consequential

benefit, as per law, which includes the return of imported goods to the person from whom the seizure have been made.

(Pronounced in Court on 21/02/2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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