IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Date of Hearing: 20/07/2018
Date of Pronouncement/Decision: 17.01.2019

Appeal No. C/77597 & 77598/2018-DB

(Arising out of Order-in-Original No. F No. S33-35/2018 Adjn. (Port) dated 29/06/2018 & F No. S33-36/2018 Adjn(Port) dated 29/6/2018 passed by the Commissioner of Customs (Port)]

S R K Metal & Industries h
Pink Commercial **Appellant(s)**

vs.

CC(Port) Kolkata **Respondent (s)**

Appearance:

Shri B.K. Singh & S.M. Akhtar, Adv for the Appellant (s)
Shri S. Guhar, AC(AR) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Final Order No.75047-75048/2019

Per Shri Bijay Kumar

1. Both these appeals are on the common issue and being disposed off together.
2. The present appeals are filed against the impugned order passed by the Commissioner of Customs (Port) Kolkata, wherein he has extended the date of issue of Show Cause Notice by another six months from the date of seizure with intimation to the appellants regarding the extension of time for issuance of Show Cause Notice in terms of amended provisions of Section 110(2) of Customs Act. Being aggrieved by the aforesaid decision of Ld. Commissioner the appellants are before us in this appeal.

3. Briefly stated the facts of the case are that the appellant has imported consignment of electronics, electrical goods and mobile accessories etc., from China through Kolkata Port and generated Bill of Entry through Customs Electronic Declaration Interchange (EDI). The said goods were assessed by the proper officer of the Customs at the declared rate. In this case the appellant, through its authorised Customs Broker, filed the Bill of Entry on first check basis under EDI system, as the appellant was not certain about the valuation, classification and assessments of the goods imported by them. The proper officer of the Customs marked the examination order stating that "open all the packages and conduct 100 % examination in presence of DRI, check declaration, clearance withheld till further order from DRI". This examination order was given by the Appraising Officer as per Bills of Entry. The consignment got examined by the proper officer along with Officer of the Director of Revenue Intelligence. However, the consignment was not cleared at the instance of DRI which was subsequently seized on 06/01/2018, 12/01/2018, 18/04/2018 and 20/04/2018, under Section 110 of the Customs Act, for pending further investigation. The investigation could not be completed within 6 months from the date of seizure i.e. 06/01/2018 and the Commissioner of Customs(Port) Kolkata, on account of being as Adjudicating Authority extended the time of issuance of Show Cause Notice by six months on the request of DRI, without affording the personal hearing to the appellant on the ground of amended provisions to Section 110(2) of the Customs Act 1962.

4. On behalf of the appellant Ld. Advocate would submit that the extension of Show Cause Notice by invoking the amended provision of sub-Section(2) of Section 110 of Customs Act, would not be applicable in their case as the amendment has been brought with effect from March, 29, 2018. The seizures in these cases were affected on 18/01/2016, 06/01/2018, 12/01/2018, 18/04/2018 and 20/04/2018, and hence the amended provision is not applicable under the present proceedings for the seizure made prior to amendment of Section 110(2) of the Act. The amendment not has been carried from retrospective date. On this account itself the order is vitiated in respect of the seizures. It was also argued that by not following the Principle of Natural Justice and not issuing the Show Cause Notice to the appellant before extending the date of issuance of Show Cause Notice by six months under amended provisions of Section 110(2), is absolutely bad in law.

5. It was further submitted by Ld. Advocate that in this case the consignment was withheld clearance with effect from 03-04/10/2018, even though the proper seizure was made on 18th January, 2018, and hence the date of seizure be taken as 03/10/2018, the appellant was deprive to be owner of goods by such withholding of the import consignment. Further, Ld. Advocate submits that in this case the consignment was detained by the proper officer pending clearance from DRI on 13/10/2017 and hence, it will be presumed that the consignment has been put under detention, and therefore, this should be the date for the seizure of goods for the purpose of computation of the period of the six months period. It was also submitted that the

appellant has preferred appeal before Hon'ble High Court on 19th June 2018, for release of the imported consignment. Further, it was stated that the appellant would be withdrawing this writ petition as the appeal has been filed before this Hon'ble Tribunal against the impugned order.

6. It was also submitted that Ld. Commissioner has not afforded the hearing to the appellant before extension of time as per proviso of Section 110(2) of the Customs Act. Reliance was placed on the Apex Court decision in case of ***Assistant Collector of Customs, vs. Charan Das Malhotra***,[(1971) 1 SCC 697], it was prayed that on this ground itself the impugned order is required to be set aside by the Tribunal and seized goods were prayed to be released in favour of the appellant forthwith.

7. It is also submitted that while passing the impugned order dated 29th June 2018, the respondent Commissioner has failed to apply his mind, in not considering the examination report dated 13/10/2017, from which it is clear that the clearance of the said consignment were withheld by the Customs Authority subject to further order of DRI and hence there is no ambiguity that withholding the clearance of the goods and the Custom Authority had detained the same on October 12, 2017. It is also prayed that Ld. Respondent Commissioner also failed to appreciate that the dominion of the said goods imported by the appellant was passed to the Customs Authority with effect from October 13, 2017, and detention of the said goods tantamount to seizure, thereof, hence it was incumbent upon the Customs Authority

to issue the Show Cause Notice under Section 124 of the Customs Act, within six months on and from October 13, 2016, or get the said period of six months extended by further period of another six months before expiry thereof, which has not been done in this case.

8. Ld. Advocate further submits that the certain legal proposition that owner of the goods has right of restoration of their seized goods in the event of no Show Cause Notice being issued within six months from the date of seizure of the goods which has obviously been not done in this case. Considering the detention of goods with effect from 13/10/2017.

9. Ld. Advocate hence prayed that goods should be returned to the appellant in the aforesaid circumstances in terms of provisions of Section 110(2) of the Customs Act.

10. Ld. AR on behalf of the Revenue supports the impugned order. Further he says that after the amendment of provisions 110(2) of the Customs Act the mandatory requirement for the issuance of Show Cause Notice to the person to whom the seizure has been affected has been changed and now under the new provisions the Adjudicating Authority is required to satisfy himself for the reasons submitted by the Investing Agency for the extension of the time the for issue of Show Cause Notice under the provisions of Section 124 (a) of Customs Act. He further submits that the amendment was carried by Finance Act, 2018, says as to remove the requirement of issue Show Cause Notice for extending the time under Section 110(2) of the Customs

Act. He, therefore, submits that the impugned order is in accordance with the amended provision of law and is required to be upheld by this Tribunal.

11. We have heard Ld. Advocate, on behalf of the appellant, and Ld. AR, on behalf of the Revenue and also gone through the appeal memorandum.

12. In order to appreciate the issue at hand it is worthwhile to reproduce the legal provision involved in this case. The relevant Section of the Customs Act extracted as under;

Section 110(2) in the Customs Act, 1962

(2) 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:
Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the 2[Commissioner of Customs] for a period not exceeding six months.

Section 124 in the Customs Act, 1962

124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral.

After amendment **Section 110(2)** of the Customs Act reads as follows;

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 be person from whose possession they were seized:

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 of specified:

Provided Further that where any order for provisional release of the seized goods has been passed under Section 110A, the specific period of six months shall not apply.

13. It is seen from the amendment that has been substituted with word. It is the contention of the Revenue that by this change the need for issuance of Show Cause Notice is not required. The only thing which is required to be done under the amended provision is that the Adjudicating Authority will have to satisfy himself and record the

reasoning for extension of Show Cause Notice after satisfying himself on the basis of facts produced before him by the Investigating Agency. Further, Ld. Advocate on behalf of appellant submits that the change has been effected in the Finance Act in order to improve the ease of doing business in the cross/Border trade vide Section 163 which says as under;

> *" I also propose to make certain changes 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 if those timelines are not adhered to."*

14. It is the submission or the Ld. Advocate that the change has been brought about in the Customs Act, 1962, as the trade facilitation major and dispute resolution mechanism in order to reduce the litigation. He emphasis that the amendment is not for the dispensation issuance of Show Cause Notice as contemplated against 110(2) of the Act. We find that this issue has been decided as **M/s Chandra Das Malhotra case referred(supra).** In this case Ld. Single Judge of Kolkata High Court decided that there is no need of issuance of Show Cause Notice to the affected party vide extending the time limit of issuance of Show Cause Notice under Section 110(2) of the Customs Act. Decision of Single Bench was reversed by the decision of Hon'ble Division bench wherein it is held as under;

"8. Aggrieved by the two orders of extension passed in the manner aforesaid, the respondent moved the High Court of Calcutta under Art. 226 of the Constitution, contending that the proviso to Section. 110(2) envisaged only one extension, and that therefore, the second extension was invalid. The learned Single Judge, who heard the writ petition, rejected this contention holding that the proviso empowered the Collector to grant as many extensions as the completion of the inquiry and the issuance of the notice under Section. 124(a) required but in no case exceeding six months at a time. The second contention urged by the respondent was that the period of the first extension having expired on January 19, 1964 and no further extension having been granted by that date, he became entitled to restoration-of the said watches and the second order extending the period by two months more granted a month after the expiry of the first extended period would be of no avail to the Customs authorities. This contention too was rejected on the ground that where there is a prescribed time for doing a thing but an express power is given to an authority to extend that time, such power can be exercised even after the prescribed time has expired unless there is an express provision prohibiting to, do so. There was no such provision. The learned Single Judge also held that there was no need to give to the respondent any notice of the applications for extension, the only requirement being that a sufficient cause had to be shown to the satisfaction of the Collector. The learned Judge also rejected a third contention by the respondent that in the absence of any information with the Customs officers as regards the watches save that they were of foreign manufacture, they could not have 'entertained any reasonable belief that their importation was contrary to or in violation of any statutory provision. This contention was rejected on the strength of the supplemental affidavits of the Customs officers ordered by the learned Judge. The result was that the learned Judge dismissed the writ petition negativing,

inter alia, the respondent's plea as to the restoration of the seized watches.

9. On an appeal by the respondent, a Division Bench of that High Court took a contrary view. It held that the watches having been seized on March 19, 1963, the period of six months expired on September 18, 1963, that if a notice under Section. 124(a) was not given by that time, Section. 110(2) imposed a statutory obligation on the customs to return the goods to the person from whom they were seized. The Division Bench observed that even assuming that the first extension which was granted ex parte and without any opportunity to the respondent of being heard were to be valid, the period of four months granted then having expired on January 19, 1964 and no order for further extension having admittedly been made, it was obligatory on the Customs to return the watches to the respondent. There being such a statutory obligation under Section 110(2), there was a corresponding statutory right in the respondent to have them restored to him. The Division Bench was of the view that such a right having accrued to the respondent, it could not be defeated by an order passed one month after the lapse of the first extended period. It also held that the words "sufficient cause being shown" used in the proviso meant that the Collector had to decide an application for extension judicially, the reason being that the Collector could not fairly and justly determine that a sufficient cause was shown without hearing the pros and cons of the question, and therefore, he had no jurisdiction to grant extension without giving to the respondent an opportunity of being heard. In this connection the Division Bench observed

"As long as the period of issuing notice has not expired, it might be one thing. But quite a different set of circumstances arise when the period has expired and the right to the return of the goods is vested in the person from whose possession the goods are seized. If you are to take away the right yon can

only do that for a sufficient cause. How can the officer concerned decide as to whether a sufficient cause has been shown, so as, to divest a vested right, unless he hears the parties affected. Even after the supplementary affidavits were filed in this case, it is extremely doubtful whether a sufficient cause has been shown."

According to the- Division Bench, even if the Collector's function, tinder the proviso were to be treated as an administrative, function, his authority being to determine the question affecting the, rights of the citizen, there was an implied duty to act judicially. On this reasoning, the Division Bench held that in any event the second order of extension was bad. It also found that the show cause notice issued under Section 124(a) was vague, gave no opportunity to the respondent to explain the allegations contained therein, and therefore, was bad, with the result that the appellant would be required to give a fresh notice. For the reasons above stated the Division Bench reversed the judgment of the Single Judge and allowed the writ petition. The correctness of this judgment is the subject matter of this appeal."

15. Thereafter this issue reached the Supreme Court and Supreme Court upheld the order of Division Bench of the High Court wherein it was held that as under;

17.The other decisions, which takes a contrary view, is of the High Court of Mysore in Ganeshmul Channilal vs Collector of Central Excise, AIR 1968 SC 89. The grounds on which the Ld. Judge there took that view were (1) that the power was administrative, and (2) that if notice were to be necessary, the authority which applies for extension would have to make disclosure would be detrimental to the investigation itself. For the reasons already given we cannot agree with the first *ground. As for the second ground, we do not see any reason for the apprehension. So far as the intitial period of six months is concerned, there is no question of disclosure of the investigation. The legislature itself comtemplated that ordinarily such an investigation would be completed within that period. The question of disclosure would arise only in cases where for bona fide reasons something yet remains to be done. The only disclosure in such cases would be about the fact that investigation at some place or places or about certain matters is still incomplete and pending. No one suggests that the inquiry to be held by the Collector would be similar to the one held in a Court of Law or that the officer applying for extension would be compelled to disclose the names of his informants or such other matters which would be detrimental to the investigation. Even in more serious matters, such as applications for remand in criminal cases, opportunity is detrimental to the investigation. The unreported judgment of the High Court of Bombay in Prakash Cotton Mills Pvt. Ltd. vs Assistant Collector of Central Excise, Bombay, Misc. Petn No. 127 of 1963, D/31-8-1970(D/-31-8-1970(BOM), No 127 of 1963, D/- 31-9-1970(Bom), does not throw any further light as it is mostly based on the reasoning of the Mysore High Court. We are not satisfied that as between the right of the person from whom the goods are seized and the supposed danger to the investigation the matter is so weighted down that we would be compelled to hold that the legislature could not possibly have contemplated a judicial approach by the Collector when he orders extension of time, the effect of which would be the deprivation of, or in any event, postponement of the right to restoration. In our view, the first question must be answered in favour of the respondent, and therefore, the Division Bench was right in holding that the power under the proviso was quasi judicial, or at any rate, one requiring a judicial approach, Consequently, an opportunity of being heard ought to have been given to the respondent before orders for extension were made. The High Court, consequently, was* *justified in ordering restoration of the watches in question to the respondent.*

16. Similar issue has been held in case of ***I J Rao Assistant Collector of Customs vs Bibhuti Bhushan Bagh*** [1989 (42) ELT 338 (SC)]. Wherein after examining the various case laws it has been held as under;

"13. *There is no doubt that the words "on sufficient cause being shown" in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the extension, and in this behalf he would probably want to establish that the investigation is not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceedings its character, and that reason is that a right of a person may be effected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceeding. In other words, the issue is whether there is a right in a person from* *whose possession goods are seized and which right may by prejudiced or placed in jeopardy unless he is heard in the matter. It cannot be disputed that Section 110 sub-section (2) contemplates either notice (within six months from the date of seizure) to the person from whose possession the goods have been seized in order to determine whether the goods should be confiscated or the restoration of the goods to such person on the expiry of that period. If the notice is not issued in the confiscation proceedings within six months from the date of seizure the person from whose possession the goods have been seized becomes immediately entitled to return of the goods. It is that right to the immediate restoration of the goods upon the expiry of six months from the date of seizure that is defeated by the extension of time under the proviso to Section 110(2). When we speak of the right of the person being prejudiced or placed in jeopardy we necessarily envisage some damage or injury or hardship to that right and it becomes necessary to inquire into the nature of such damage or injury or hardship for any case to be set up by such person must indicate the damage or injury or hardship apprehended by such person. In the present case, one possibility is that the person from whose possession the goods have been seized may want to establish the need for immediate possession, having regard to the nature of the goods and the critical conditions then prevailing in the market or that the goods are such as are required urgently to meet an emergency in relation to a vocational or private need, and that any delay in restoration would cause material damage or injury or hardship either by reason of some circumstance special to the person or of market conditions or of any particular quality of requirement for the preservation of the goods. But it will not be open to him to question whether the stage of the investigation, and the need for further investigation, call for an extension of time. It is impossible to conceive that a person from whose possession the goods have been seized with a view to confiscation should be entitled to know and to monitor, how* *the investigation against him in proceeding, the material collected against him at that stage, and what is the utility of pursuing the investigation further. These are matters of a confidential nature, knowledge of which such person is entitled to only upon the investigation being completed and a decision being taken to issue notice to show cause why the goods should not be confiscated. There can be no right in any person to be informed midway; during an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a person, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months. In the normal course, notice must go to such person before the expiry of the original period of six months. It is true that the further period of six months contemplated as the maximum period of extension is a short period, but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized.*

14. *We have said that notice must go to the person, from whose possession the goods have been seized, before the expiry of the original period of six months. It is possible that* *while notice is issued before the expiry of that period, service of such notice may not be effected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires. Service of the notice may be postponed or delayed or rendered ineffective by reason of the person sought to be served attempting to avoid service of notice or for any other reason beyond the control of the Customs authorities. In that event, it would be open to the Collector, if he finds that sufficient cause has been made out before him in that behalf to extend the time beyond the original period of six months, and thereafter, after notice has been served on the person concerned, to afford a post-decisional hearing to him in order to determine whether the order of extension should be cancelled or not. Having regard to the seriousness and the magnitude of injury to the public interest in the case of the illicit importation of goods, and having regard to consideration of the damage to economic policy underlying the formulation of import and export planning, it seems necessary to reconcile the need to afford an opportunity to the person effected with the larger considerations of public interest*

15. *Our attention has been drawn to Ganeshmul Channilal Gandhi and Another v. Collector of Central Excise and Assistant Collector, Bangalore - A.I.R 1968 Mysore 89 where the High Court of Mysore has held that no notice is necessary to the person from whose possession the goods are seized when the Collector proceeds to consider whether the original period of six months should be extended. Reliance has also been placed on Sheikh Mohammed Sayeed v. Assistant Collector of Customs for Preventive and Others - A.I.R. 1970 Calcutta 134 which proceeds on the view that the Collector has to satisfy himself only subjectively on the point whether extension is called for. In Karsandas Pepatlal Dhineja & Others v. Union of India and Another - 1981 E.L.T. 268 the High Court* *defined the implications of the use of the words "on sufficient cause being shown" in a statutory proceeding. None of these cases convince us that the person from whose possession the goods have been seized is not entitled to notice of the proposal to extend the period.*

16. *In our opinion, the person from whose possession the goods have been seized is entitled to notice of the proposal before the Collector of Customs for the extension of the original period of six months mentioned in Section 110(2) of the Customs Act, and he is entitled to be heard upon such proposal but subject to the restrictions referred to earlier in regard to the need for mentioning confidentiality of the investigation proceedings.*

17. *The appeal is allowed accordingly and to the extent set forth in our judgment orders of the High Court are modified, but there is no order as to costs."*

17. We have also find that similar issue has come before Hon'ble Tribunal in case of ***Harbans Lal vs. Collector of Central Excise and Customs*** [1993 (67) ELT 20(SC)] wherein it is held that two Sections 110 and 124 are independent, distinct and exclusive of each other resultantly in the reviewing the proceedings of Section 124 in case itself with the seized goods might have been return or has been returned in terms of Section 110 of the Customs Act after the expiry of permissible seizure**.**

7. *As said before Section 110 is in Chapter XIII covering the subject of search, seizure and arrest. The Section operates during the stage of investigation. Section 124, hinted earlier, is* *in Chapter IV which covers the topic confiscation of goods and imposition of penalties. The subject of investigation and that of confiscations and imposition of penalties are ex facie exclusive of each other, the goal of each being different. A Constitution Bench of this Court in I.J. Rao, Asstt. Collector of Customs and Others v. Bibhuti Bhushan Bagh and Another [1989 (3) SCC 202 = 1989 (42) E.L.T. 338 (S.C.)] while interpreting Section 110(2) proviso of the Act has held that when wanting to extend period beyond six months in respect of seizure of goods, the Collector must serve notice on and afford hearing to the owner of the goods before deciding grant of extension, as his right to restoration of his goods after six months is defeated by the order of extension. It has also viewed that where rights of a person are adversely and prejudicially affected by an order made by an authority in a proceeding, such person is entitled to a predecisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature. Earlier in point of time in The Asstt. Collector of Customs and Others v. Charan Das Malhotra [1971 (1) SCC 697 = 1983 (13) E.L.T. 1477 (S.C.)], this Court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2) and that, therefore, extension of the period has become necessary. The Court also emphasized that the Collector cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the Customs authorities applying for extension to show that such extension was necessary. It was also pointed out that on the expiry of the period of six months, from the date of seizure, the owner of the goods would be entitled as of right to restoration of the seized goods, and when right could not be defeated without notice to him that an extension was proposed. It is found that the point was considered again in M/s. Lokenath Tolaram etc. v. B.N. Rangwani* *and Others [(1974) 3 SCC 575 = 1983 (13) E.L.T. 1520 (S.C.)] but this case has been concluded on different considerations. Unquestionably thus is the settled position of law that while extending time under Section 110(2), the owner of the seized goods is entitled to notice, because the seized goods on the expiry of period of six months are required to be returned to him, and if that period was to be extended for another period of six months he had the right to be heard. The High Court in the decision under appeal has thus rightly observed that it was not disputed before it that the ex parte order extending the time by another six months as postulated in Sections 110(2) and 124 of the Act, was vitiated.*

18. Further in case of ***Gawar Construction vs. Union of India [*** 2009 (243) ELT 484 (Bomb)] it is held as under;

9*. In view of the admitted position that the machine was transferred by the respondent no. 3 to the petitioner in breach of the condition against transfer for a period of 5 years from the date of import, undoubtedly it was liable for confiscation under Section 111(o) of the Act. Under Section 110 of the Act, the respondents had the power to seize the machine as they had reason to believe that it was liable for confiscation under Section 111(o) of the Act. They also had the power to seize the machine from the custody of any person who was found in possession as Section 110 does not put any restriction on the power of the respondent nos. 1 and 2 to seize goods where they are in custody of a person other than the importer of the goods. However, a safeguard has been inserted by sub-section (2) of Section 110 that where goods are seized under sub-section (1), show cause notice under Section 124(a) shall have to be issued within 6 months or the extended period of further 6 months. The short question for our consideration is whether issuing of a* *notice to the owner-original importer of the goods is enough or whether notice is also required to be issued to the person from whose custody the goods are seized.*

10. *It is axiomatic to say that where civil rights of a person are likely to be affected by an administrative or quasi-judicial order, rules of natural justice require that the person affected be given a reasonable opportunity of being heard before the order is passed unless the statute under which the order is passed specifically excludes such opportunity. Even where the statute specifically excludes the opportunity of being heard, Courts would be entitled to consider the legality and constitutional validity of such a provision but, in any event, where the statute does not exclude their observance, the authority passing the order affecting civil rights of a person must follow the principles of natural justice which include giving of a reasonable opportunity of being heard to the person affected. It is in this light that we must interpret the provisions of Section 110(2) read with Section 124 of the Act. Where an importer of goods transfers the goods, may be in violation of a condition of import, the transferee may not necessarily know that the goods are being transferred in breach of any condition prohibiting the transfer. The transferee, who has bona fidely purchased the imported goods for consideration without notice of any breach of condition of import or violation of any prohibition, may be in possession of the goods. Though Section 110 confers a power on the customs authorities to seize the goods from possession of such transferee even without notice, sub-section (2) of Section 110 read with Section 124 of the Act cast an obligation on the customs authorities to issue a show cause notice within 6 months or extended period of further 6 months to show cause why the order of confiscation of the goods should not be made. Opportunity must be given to the person in possession of the goods because their confiscation would affect his civil right to possess the goods which were seized from his custody. It is for this reason that Section 124 uses the expression "the owner of* *the goods or such person" and says that no order of confiscating the goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him the grounds on which it is proposed to confiscate the goods or to impose a penalty. The word "or" appearing in the expression "owner of the goods or such person" is obviously used conjunctively and not disjunctively. A notice may be required to be given only to the owner where he is in possession of the goods and they are seized from his custody, but where the goods are seized from the custody of a person other than the original owner-importer, the notice must also be given to the person from whose custody the goods are seized. If we interpret the expression "owner of the goods or such person" only to mean the owner, that would render the word "such person otiose and, in any event, would render the validity of the section susceptible to challenge on the ground of being unreasonable and violative of rights of the person in possession of being denied the opportunity of even being heard before his rights are affected. We are clearly of the view that the person from whose custody the goods have been seized under Section 110 of the Act is entitled to a notice under Section 124 of the Act and is entitled for a reasonable opportunity of making a representation and reasonable opportunity of being heard before an order of confiscation of goods is passed. In the present case, admittedly no notice under Section 110(2) read with 124 of the Act has been issued to the petitioner within a period of 6 months. In fact the notice has not been issued till today. Consequently, the continued detention of the goods seized beyond the statutory period of 6 months (which can be extended up to one year) under Section 110(1) of the Act is illegal. The reliance was placed on the Charan Das malhotra's case(supra).*

***11**. Wherein the Supreme Court held that on failure to issue show cause notice within 6 months, a civil right accrued to the respondent to have possession of the goods and since the order granting extension sought to defeat the right, the order for* *extension of time could not be passed without giving an opportunity of being heard to the respondent from whose custody thee goods were seized. Indeed as the Supreme Court has held that a notice is required to be given to the person from whose custody the goods were seized even for granting extension of time to issue show cause notice, obviously a notice is required to be given to the person from whose custody the goods are seized before passing an order of confiscation.*

12. *As in the present case, the notice has not been given to the petitioner within the statutory period of 6 months, the continued seizure of the machine is bad in law and is hereby quashed. Rule is accordingly made absolute in terms of prayer clause (a). We make it clear that this order would not prevent the respondents from taking any other action against the respondent no. 3 to whom a notice has been issued within the statutory period and/or qua the machine, if it is otherwise permissible in law.*

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 of fact of expiry of six month 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.

19. 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 statue 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 statue.

20. 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 case of extension at hand.

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

(Order Pronounced on 17.01.2019)

Sd/	Sd/
(P.K.Choudhary)	**(Bijay Kumar)**
MEMBER(JUDICIAL)	**MEMBER(TECHNICAL)**

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