IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/87870/2017

(Arising out of Order-in-Original No. PCCP/Adjudicating Authority/AKJ/04/2017 dated 3.7.2017 passed by Principal Commissioner of Customs (P), Mumbai)

R.D. Traders **Appellant**

Vs.

Commissioner of Customs (P), Mumbai **Respondent**

Appearance:

Ms. Pooja Reddy, Advocate, for appellant
Shri Chatru Singh, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 12.2.2018
Date of Decision: 11.4.2018

ORDER NO. **A/85963/2018**

Per: Ramesh Nair

The appellant filed the present appeal against the order of the Principal Commissioner of Customs (Preventive), Mumbai in which the learned Commissioner permitted the extension of time of six months provided under Section 110(2) of the Customs Act, 1962 by another six months for issue of show cause notice as provided for in the proviso thereto in order to enable the investigating officers of this case to thoroughly investigate and complete the investigation.

2. Ms. Pooja Reddy, learned counsel appearing on behalf of the appellant, submits that the enquiry started in the present case on 5.1.2017. Thereafter the goods belonging to the appellant was seized on 17.2.2017 and a seizure memo was handed over to the appellant on 21.2.2017. Accordingly, the show cause notice with respect to the seized goods should have been issued within six months. However, the Revenue issued a show cause notice dated 29.6.2017 proposing extension of time limit for issuance of show cause notice. She submits that in the show cause notice, the appellant was directed to reply within five days of receipt of the show cause notice, but the hearing was fixed even before the five-day period. The appellant filed a reply on 30.6.2017 and on 3.7.2017 they appeared before the Principal Commissioner for hearing and made detailed oral submissions. On the same day, order permitting extension of time limit was issued. She submits that the learned Principal Commissioner has carried out the entire proceedings within five days time in a haste. Therefore, the principles of natural justice were violated. Hence the impugned order is not sustainable on this ground alone.

3. Shri Chatru Singh, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides. We find that the limited issue involved in the present case is that whether the order passed by learned Principal Commissioner for extension of time limit for issuance of show cause notice in respect of seized goods is legal and correct or otherwise. In this connection, we reproduce Section 110 of the Customs Act, 1962 as below:-

> *"SECTION Seizure of goods, documents and things. 110. – (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :*
>
> ***Provided** that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.*
>
> *[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.*

(1B) Whereany goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying thecorrectness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

(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 [Principal Commissioner of Customs or Commissioner of Customs] for a period not exceeding six months.*

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."

As per proviso to sub-section (2) of Section 110, the Principal Commissioner of Customs or Commissioner of Customs is empowered to extend the period of six months for issuance of show cause notice in respect of the seized goods for a period not exceeding six months on sufficient cause being shown.

5. As per the facts of the present case, the enquiry was initiated on 5.1.2017. Thereafter the appellant was summoned telephonically on 11.1.2017. Thereafter they were issued summon on 9.2.2017. The goods were seized on 17.2.2017. The appellant attended the office of DRI on 21.2.2017 when a summon was handed over. The appellant attended the office in pursuance of the summon on 7.6.2017. Again, thereafter the appellant was directed to appear before the officers of DRI, Ahmedabad on 17.6.2017. The Bill of Entry relevant in the case was provided by the appellant on 22.6.2017. In this fact, the investigation was undergoing. Since the same was not concluded, the show cause notice could not be issued within the prescribed period of six months. Thereafter a show cause notice was issued on 29.6.2017 proposing extension of time limit for issuance of show cause notice. In these sequences, we find that sufficient cause was shown for extending the time limit. Therefore, the extension of time limit of further six months for issuance of show cause notice in respect of seized goods does not appear to be illegal.

6. Accordingly, we do not find any error in the impugned order, hence the same is upheld. Appeal is dismissed.

(Pronounced in court on 11.4.2018)

(C.J. Mathew) **Member (Technical)**	**(Ramesh Nair)** **Member (Judicial)**

tvu