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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOMS APPEAL NO.21 OF 2016
WITH
NOTICE OF MOTION NO.335 OF 2016

The Principal Commissioner of Customs … Appellant
Vs.
Beauty Gem … Respondent

Mr. Pradeep S. Jetly for the Appellant.
Mr. Anil Balani a/w Ms. C. Pooja Reddy for the Respondent.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 9th AUGUST, 2017

P.C.

1 Heard the learned counsel appearing for the Appellant. With a view to appreciate the controversy, a brief reference to the facts will be necessary. The Respondent – Assessee who is stated to be an importer imported vide Bill of Entry dated 8th April, 2014 raw pearls which were seized on 29th May, 2014 as prima facie, the Revenue found that there is a mis-declaration and/or that the goods were under valued.

2 The Commissioner of Customs, C.S.I. Airport, Mumbai issued notice dated 25th November, 2014 for extension of time under

the proviso to Sub-Section (2) of Section 110 of the Customs Act, 1962 (for short "the Customs Act"). By the order dated 27th November, 2014 the Commissioner of Customs extended the time for issuance of show cause notice by a period of six months from 28th November, 2014 in terms of proviso to Sub-Section (2) of Section 110 of the Customs Act. Being aggrieved by the said Order-in-Original, the Respondent – Assessee preferred an Appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short "Appellate Tribunal)". By the impugned order, the Appellate Tribunal allowed the Appeal by setting aside the impugned order. However, the Appellate Tribunal observed that the show cause notice dated 25th May, 2015 issued under Section 124 of the said Act shall proceed. The Revenue was directed to retain sample of the pearls in question and also provide one set of sealed samples to the Respondent, in accordance with law.

3 The first submission made by the learned counsel appearing for the appellant was that when the Appeal was taken up for hearing on 23rd June, 2015 by the Appellate Tribunal, the order impugned in the Appeal which had worked itself out as after completing investigation, a show cause notice dated 25th May, 2015 was issued under Section 124 of the Customs Act. He would, therefore, submit that on the date on which the Appeal was heard by the Appellate Tribunal, the same had become infructuous. He invited our

attention to the decision of the Apex Court in the case of *I.J. Rao, Assistant Collector of Customs Vs. Bibhuti Bhushan Bagh*[1]. He invited our attention to the show cause notice dated 25th November, 2014 issued by the Commissioner and in particular in paragraphs 4 to 7 thereof. He submitted that reasons were given as to why show cause notice could not be issued within the stipulated period of six months as provided in Sub-Section (2) of Section 110. He submitted that what is set out in the notice certainly constitute sufficient cause enabling the Commissioner to extend the time as provided in proviso to Sub-Section (2) of Section 110 of the Customs Act. He also pointed out the findings recorded by the Commissioner in paragraphs 2.1 to 2.4. He submitted that as sufficient cause was established and as the Commissioner was satisfied that there existed sufficient cause, for reasons recorded, the Commissioner extended the time by a further period of six months. He would submit that there was no reason for the Appellate Tribunal to interfere with the said finding of fact which was based on grounds set out in the notice. He would submit that no interference is called for.

4 We have considered the submissions. We have perused the impugned judgment and order of the Appellate Tribunal as well as the order which was impugned before the Appellate Tribunal which was passed by the Commissioner.

1 1989(42) E.L.T. 338 (S.C.)

5 Under Sub-Section (1) of Section 110, a power of confiscation of the goods is conferred on the proper officer. What is material for our consideration is Sub-Section (2) and its proviso which reads thus :-

> "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 Commissioner of Customs for a period not exceeding six months**

6 Prior to 26th May, 1995, the Collector of Customs was conferred with the power of extension of time as provided in the proviso. The said proviso came up for consideration of the Apex Court in the case of *I.J. Rao* (supra). Paragraphs 9 and part of paragraph 13 of the said decision read thus :-

> "9. It is apparent that goods liable to confiscation may be seized by virtue of Section 110(1) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The proviso to Section 110(2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf.

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 confisaction 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."

7 As stated earlier, when the decision of the Apex Court was rendered, the power to extend the period of six months was conferred on the Collector of Customs. The Apex Court has laid down in paragraph 13 the manner in which the power to extend the time should be exercised. Firstly, the Customs Officer who seeks extension of time must show good reasons for seeking extension. The Apex Court held that the Collector must be satisfied that investigation is being pursued seriously and the officer needs more time for taking it to its logical conclusion. The Apex Court held that Sub-Section (2) of Section 110 creates a valuable right in favour of a person whose goods are seized in exercise of the power under Sub-Section (1) of Section 110.

8 Proviso to Sub-Section (2) lays down that period of six months cannot be mechanically extended but it can be extended only if the Commissioner of Customs is satisfied that sufficient cause is shown by the Customs Officer.

9 We have perused the Order-in-Original passed by the Commissioner on 27th November, 2014. Paragraphs 2.1 to 2.4 are the findings. Paragraphs 2.1 to 2.4 read thus :-

"2.1 I have carefully gone through the facts, records and correspondence of importers of the case. The Investigation cell of SIIB of Airport Special Cargo Commissionerate has stated that the investigations are still in progress. The investigation involves inspection and scrutiny of large number of documents at the PCCCC as well as at the importer's end. After scrutiny of the documents as above, further statements would be required to be recorded. It is also felt that this offence is serious in nature and it needs a deeper investigation.

2.2 It was submitted by M/s Beauty Gems through their advocate that they had been called upon to submit copies of documents relating to all the imports made during the last 5 years and they had dutifully submitted the documents. In this regards, the SIIB has submitted that these are voluminous in nature and co-relating them with other aspects of investigation is the time consuming task. The documents regarding agreement with foreign supplies/ indenters needs to be called upon and verified. The verification report of overseas inquiry is also awaited which is essential to verify the declarations made by the shipper at origin.

2.3 The SIIB has stated that the perusal of the past Bills of Entry, and verification of the invoices and local purchase details is likely to take time and will require extensive investigation.

2.4 I find that as further investigations are still required to be done, extension of time limit of six months is justified in the present case, in terms of proviso to Section 110(2) of the Customs Act, 1962. In respect of my above finding, I would like to draw ratio from judgements of the Hon'ble Supreme Court of India in (a) Harbanslal V/s Collector of Central Excise and Customs (ELT 1993(67) ELT 20(SC) and (b) Manick Chand Paul and others, etc. Vs. UOI and Others 1984(18) ELT-185(SC). In both the above judgments, the Hon'ble Apex Court upheld the authority provided under the proviso to Section 110(2) of the Customs Act, 1962, for extending time limit, for issue of Show Cause Notice."

10 We have perused the show cause notice dated 25th November, 2014. Paragraphs 2.1 to 2.3 of the Order-in-Original are reproduction of what is stated in the show cause notice. There is no finding recorded by the Commissioner that he was satisfied that investigation is being pursued seriously and there is a need for grant of more time for taking the investigation to its logical conclusion. There is no finding recorded that sufficient cause was made out by the Customs Officer. In view of the law laid down by the Apex Court and in view of the express words used in proviso to Sub-Section (2) of Section 110, the Commissioner could not have extended the time without recording his satisfaction on basis of the material on record that investigation is being pursued seriously and there is a need for more time for taking it to its logical conclusion. Merely because investigation is delayed, that is no ground for grant of extension of time so as to defeat the right created under Sub-Section (2) of Section 110.

11 Perusal of the impugned order of the Appellate Tribunal shows that it records findings of fact based on the material which was available on record. It is recorded that the inquiry with respect to live consignment is completed in May-June, 2014 when the reports were received from the laboratory. It is recorded that laboratory reports have been shown to Panch witnesses on 29th May, 2014. The Appellate

Tribunal observed that the request for extension of time was very vague. The Appellate Tribunal was conscious of the fact that show cause notice dated 25th May, 2015 has been issued. In short, the Appellate Tribunal has recorded a finding of fact that sufficient cause was not made out by the Respondent. As stated earlier, the Commissioner has not recorded satisfaction in terms of proviso to Sub-Section (2) of Section 110 and what is held by the Apex Court in paragraph 13 of its decision in the case of *I.J. Rao*.

12 Therefore, on merits, we find no reason to interfere with the findings of fact recorded by the Appellate Tribunal that sufficient cause was not made out for extension of time.

13 Grant of extension of time as provided in the proviso affects the right which is created under Sub-Section (2) of Section 110 in favour of the person from whom the goods have been seized. If no notice under Section 124 is issued within a period of six months from the date of the seizure, the persons from whom goods are seized is entitled to return of goods as a matter of right. Therefore, we do not agree with the submission made by the learned counsel appearing for the Appellant that as show cause notice was issued after completing investigation within the extended time, the Appeal before the Appellate

Tribunal was rendered infructuous. Even if the Appellate Authority has found that no grounds existed for extension of time, the notice issued under Section 124 of the Customs Act remains unaffected. Even that is the finding recorded by the Appellate Tribunal in the impugned judgment and order and in particular in paragraph 7 thereof.

14 We, therefore, find that there is no reason to interfere with the impugned order of the Appellate Tribunal. In any event, no substantial question of law arises much less a question of law.

15 Accordingly, we find no merit in the Appeal and the same is dismissed. Pending Notice of Motion does not survive and the same is disposed of.

(RIYAZ I. CHAGLA, J) **(A.S. OKA, J)**