

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 30.11.2021
DELIVERED ON: 20.01.2022

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 819 OF 2020
WITH
IA NO. CAN 1 OF 2020**

**THE ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE
INTELLIGENCE, KOLKATA ZONAL UNIT & ANR.**

VERSUS

M/S. DEC AGROTECH PVT. LTD. & ORS.

**Appearance:-
Mr. Kaushik Dey.
Mr. Tapan Bhanja**

.....for the appellants

**Mr. N.K. Chowdhury
Mr. Arijit Chakraborti
Mr. Nilotpall Chowdhury
Mr. Prabir Bera**

Mr. B.P. Banerjee

**.....for the respondents
.....for Customs**

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal by the Directorate of Revenue Intelligence (DRI) is directed against the order dated 14.09.2020 in WPA No. 6390 of 2020 filed by the Respondent No. 1 and 2 herein which was allowed.
2. In this judgment the appellant shall be referred to as the revenue and the respondents 1 and 2 as the writ petitioners.
3. The writ petition was filed for issuance of a writ of Mandamus to withdraw/cancel the order dated 24.06.2020 passed by the revenue under proviso to Section 110(2) of the Customs Act, 1962 (Act for brevity) and for a writ of prohibition to prohibit the revenue from withholding the goods covered under the shipping bills dated 13.09.2019.
4. The first Writ Petitioner is a private limited company incorporated under the Companies Act, 1956 having its registered place of business at Calcutta. The second Writ Petitioner is the Managing Director of the Company. During July, 2019, the officers of the revenue commenced an investigation against the writ petitioners by way of search and seizure. Summons were issued and statements were recorded by the CGST Authorities with respect to 24 exports made by the writ petitioners between February 2019 and June 2019. During September 2019, the writ petitioners filed two shipping bills dated 13.09.2019 for export of Chewing Tobacco through Calcutta Port and another export consignment under shipping bill

dated 30.09.2019 for the same product. The said three export consignments were subjected to examination and all the three consignments were seized under Section 110 of the Customs Act on the allegations of mis-declaration. Thereafter, the revenue commenced investigation with respect to the exports made by the writ petitioners. Aggrieved by the same, the second writ petitioner filed WP No. 23075 (W) of 2019 for issuance of a Writ of Mandamus to restrain the revenue from proceeding with the investigation carried on by them against the writ petitioners and for a consequential direction to release the export consignments covered under the three shipping bills along with prayers for appropriate interim relief. The Learned Writ Court by order dated 19.12.2019 was of the view that different authorities can proceed with respect to the same transaction if liabilities arising from one transaction are in respect of different legislations under which the authorities operate and there is no bar and/or impediment in doing so. With such reasoning, the prayer for interim relief was not granted.

5. During January 2020, summons was issued to the second writ petitioner under section 108 of the Act and statements were recorded. The writ petitioners submitted petitions dated 14.02.2020 and 15.02.2020 praying for release of the export consignments, it is alleged that though such petitions were submitted no orders were passed on the same. During June 2020, summons was issued to the second writ petitioner and his spouse directing them to personally appear before the authorities. Being aggrieved by the same the writ petitioners filed an application in WP No. 23075(W) of 2019 praying for release of the exports consignments. On 18.06.2020 the

second writ petitioner was arrested on the ground that the offence under section 135 of the Customs Act, has been committed and he was remanded to judicial custody on 19.06.2020, and enlarged on bail on 09.07.2020. While so on 24.06.2020, the second appellant/revenue passed the order extending the period of issuance of Show Cause Notice in exercise of his powers under section 110(2) of the Act for a further period of 6 months with effect from 30.6.2020 with respect to the seizure of three export consignments and such order was forwarded to the writ petitioners through email dated 25.06.2020. This order extending the time for issuance of Show Cause Notice was impugned in the writ petition.

6. The writ petitioners contended that the period of six months from the date of seizure of the three exports consignments intervene on 17.04.2020 and no notice under clause (a) of Section 124 of the Act had been issued to the writ petitioners with respect to the seized goods and as such the provisions of Section 110(2) of the Act is applicable to the case of the writ petitioners, fastening a statutory obligation on the revenue to return the seized goods in terms of section 110(2) at the expiry of the period of 6 months from the date of seizure and in the absence of any appropriate order of extension under section 110(2) there is a statutory right for the writ petitioners to obtain return of the seized goods. It was contended that the authorities cannot mechanically pass the order extending the time limit for issuing the Show Cause Notice and unless the authority is satisfied that there exists sufficient cause necessitating the extension and burden of proof of such necessity is clearly on the investigating authority who applied for

extension and not on the person from whom the goods were seized. It was further contended that prior to issuance of the order extending the period for issuance of Show Cause Notice, no opportunity was granted to the writ petitioners and an *ex parte* decision came to be taken by the authorities which is arbitrary and illegal. Reliance was placed on the decision of the Hon'ble Supreme Court in *Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta, & Ors. –Vs-Charan Das Malhotra [1983 (13) ELT 1477 (S.C)]* and submitted that proviso to Section 110(2) of the Act cannot be invoked without granting prior opportunity which includes opportunity of hearing to the person from whom the goods were seized. The writ petitioners placed reliance on the decision of the Hon'ble Supreme Court in the case of *I.J. Rao, Assistant Collector of Customs-Vs.-Bibhuti Bhushan Bagh [1989(42)ELT 338 (S.C)]* and contended that it is mandatory for the aforesaid procedure to be followed before exercising powers under proviso to Section 110(2) as has been substituted with effect from 29.03.2018 by Finance Act 2018 and new proviso has been introduced and prior to such substitution, the proviso to Section 110(2) of the Act provided for extension of time limit and not about any information to be provided to the person from whom the goods were seized. It was further contended that the amendment which was by way of substitution of the earlier proviso to Section 110(2) of the Act, has fastened responsibility on the authority while extending time for issuance of Show Cause Notice under section 124(a) of the Act.

7. It was further contended that the amended proviso to Section 110(2) should be read keeping in mind the judicial pronouncements referred above and if done so it would mean that the legislature had made an amendment in the said proviso in tune with the guidelines issued by the Hon'ble Supreme Court. It is further submitted that the accrued civil right of the writ petitioners in terms of Section 110(2) of the Act cannot be taken away by an *ex parte* decision by exercising the power under the proviso to Section 110(2). Further it was contended that the order of extension dated 24.06.2020 passed by the second appellant, impugned in the writ petition, was bereft of any reasons and it has been mechanically passed. As a result of such, arbitrary and illegal action, rights of the petitioner guaranteed under Article 14, 19(1)(g), 21, 300A and 301 of the Constitution of India have been infringed.

8. It appears that no affidavit of opposition was filed by the appellant who were impleaded as the respondent in the writ petition and the writ petition came to be allowed by order dated 14.09.2020, impugned before us.

9. It is submitted by the Learned Standing Counsel appearing for the appellant/revenue that reasonable opportunity was not granted to the revenue to place the facts and controvert the submissions made by the writ petitioners, nevertheless, oral submissions were made by the appellants/respondent.

10. The Learned Writ Court held that the scope of Section 110(2) was considered by the Hon'ble Supreme Court in *Charan Das Malhotra and Bibhuti Bhusan Bagh* (supra) wherein it has been held that the power under

the proviso to Section 110(2) of the Act is quasi-judicial which required a judicial approach and extension order cannot be mechanically passed. Further it was held that the order of Hon'ble Supreme Court in *Charan Das Malhotra and Bibhuti Bhusan Bagh* (supra) held that notice was required to be issued to the person from whom the goods were seized before the expiry of 6 months. The court also noted the amended proviso which came into effect on 29.03.2018 and held that the adjudicating authority is required to adhere to principles of natural justice in any adjudication proceeding, unless there is a specific prohibition in the statute from doing so. Noting, the proviso to Section 110(2) prior to its amendment, the Court held that the authority was exercising quasi-judicial power, are required to adhere to the principles of natural justice. The Court further held that after the amendment the proviso incorporates two additional responsibilities on the authorities one of such being that authority is required to record reasons for extension of time and the other is to inform the person from whom the goods were seized before the expiry of the period so specified. Therefore, the Court held that the amendment which came into effect from 29.03.2018 does not obviate the requirement of adherence to the principle of natural justice when power under section 110(2) of the Act is exercised. That, the amendment introduced does not take away the character of quasi-judicial powers exercised and the requirement to have a judicial approach. Further the authorities overlooked the fact that they were acting in a quasi-judicial manner and they were required to take a judicial approach and not otherwise. The authorities were required to give an opportunity of hearing to the writ petitioners from whom the goods were seized which they did not do

while issuing the order impugned in the writ petition. Therefore, on the sole ground of breach of principles of natural justice, the order was set aside. The Court further held that no observation made in the order is to be considered as a decision on the merits of the rival claims before the authority and the authority was at liberty to take steps in accordance with law.

11. Before we consider the submissions of the Learned Standing Counsel for the appellant revenue, we are required to point out a subsequent development which had taken place. The Learned Single Bench had quashed the order dated 24.06.2020 solely on the grounds of breach of principles of natural justice leaving it open to the authority to proceed further. Therefore, the appellant revenue issued Show Cause Notice dated 18.11.2020 to the writ petitioners under section 124 of the Act, calling upon the noticees to explain as to why the value of the goods covered under the three shipping bills which were attempted to be exported should not be rejected; as to why the goods should not be confiscated under section 113(i) and 113(l) of the Act and why penalty should not be imposed on each one of the noticees under section 114 and / or Section 114AA of the Act.

12. The writ petitioners participated in the adjudication proceeding and the Principal Commissioner of Customs (Port), Calcutta has passed the order-in-original dated 21.09.2021 affirming the proposal made in the Show Cause Notice, rejected the declared value of the goods and re-determined the value at Rs. 4,64,770/- and also confiscated the goods giving the right to redeem the goods under section 125(1) of the Act on payment of redemption

fine of Rs. 20,00,000/- and imposing penalty on the writ petitioners as well as other co-noticees.

13. The Learned Counsel appearing for the respondent/writ petitioners submitted that the order which was impugned in the writ petition has no bearing on the adjudication proceedings, commenced by Principal Commissioner of Customs and therefore, the writ petitioners participated in the adjudication and they will avail remedies provided for under the Act as against the order- in-original dated 21.09.2021. Thus, it is submitted by the Learned Counsel appearing for the respondent/writ petitioners that nothing would survive for consideration in this appeal filed by the revenue, as the goods have already been confiscated and the adjudication has been completed and order has been passed.

14. We have heard the submissions of the Learned Counsel for the revenue on the aforementioned submission. The Learned Writ Court had considered the amended proviso to Section 110 (2) of the Act and read into the said proviso by observing that before the order of extension is passed for issuance of the Show Cause Notice principles of natural justice have to be complied with and the writ petitioners are to be heard before passing the order of extension. Therefore, we are required to decide the correctness of the said finding recorded by the Learned Writ Court, as the decision would impact other proceedings as well.

15. Having expressed such a view, the Learned Counsels appearing on either side submitted that they would argue the matter on merits. This is how we commenced hearing of this appeal.

16. Mr. Kaushik Dey, Learned Senior Standing Counsel assisted by Mr. Tapan Bhanja and Mr. B.P. Banerjee, submitted that the amended proviso to Section 110(2) only provides for recording of reasons for extending the period for issuance of the Show Cause Notice for a further period of not exceeding 6 months and inform the person from whom such goods were seized before the expiry of the period so provided and there is no requirement as per law to provide opportunity of hearing to the writ petitioners before informing/intimating the extension. It is submitted that in terms of the amended proviso only two conditions are required to be fulfilled namely reasons have to be recorded in writing for extension of the period for a further period of 6 months and to inform the person from whom such goods were seized before the expiry of the period so specified. The statute does not prescribe or provide for prior hearing to the writ petitioners before passing the order of extension. It is submitted that the perusal of the order which was impugned in the writ petition will clearly show that the reasons have been recorded by the authority by taking note of the Taxation and other laws (Relaxation of Certain Provisions) RCP Ordinance 2020 and observed that by virtue of the said ordinance the time limit for issuing of a notice as specified in or modified under the Act which falls during the period from 20.3.2020 to 29.06.2020 has been extended upto 30.06.2020. Thus, in terms of the proviso to Section 110(2) as amended, the period for issuance of Show Cause Notice under section 124 of the Act was extended by a further period of 6 months with effect from 30.6.2020. Therefore, it is submitted that the authority has recorded reasons and has communicated the same to the writ petitioners thus fulfilled the twin conditions. Further, it is

submitted that on a plain reading of the amended proviso to Section 110, it is clear that the opportunity of prior hearing stands expressly excluded in the statute. Therefore, the Learned Writ Court committed an error in setting aside the order dated 24.06.2020 on the grounds of breach of principle of natural justice. It is submitted that the Learned Single Bench had referred to the two decisions relied on the writ petitioners in the case of *Charan Das Malhotra and Bibhuti Bhushan Bagh*, which are not applicable to the facts and circumstances of the case on hand, as these decisions were rendered considering the statute as it stood prior to its amendment.

17. It is submitted that under the pre-amended law the power under the proviso to Section 110(2) could be exercised for “sufficient cause” and this was subject matter of interpretation in the said two decisions of the Hon’ble Supreme Court and in the light of the said proviso the decision was rendered. After the amendment, the said expression has been done away with and only twin conditions have to be fulfilled (i.e) to record reasons in writing and communicate the same to the persons from whom the goods were seized before the expiry of the period so specified. Therefore, the two decisions which had been referred to in the impugned order are not applicable to the case on hand. Further, it is submitted that by way of an amendment in 2006, the facility of provisional release of goods was provided by inserting Section 110A of the Act and for this purpose the second proviso has been added in Section 110(2) which inter alia provides that where any order of provisional release of the seized goods has been passed under section 110A of the Act, the specified period of 6 months was not applied

and due to which rigour of Section 110(2) had been relaxed. Further, it is submitted that interpreting the amended provision namely, Section 110A of the Act the person whose goods are detained can seek for provisional release and such opportunity / facility was not provided for in the statute when the two decisions of the Hon'ble Supreme Court were rendered. Further, it is submitted that when the enactment does not provide for a hearing to be given to the writ petitioners, the Learned Writ Court cannot introduce a provision in the statute and read the principles of natural justice into the provision which expressly excludes the same. Further, the Learned Writ Court ought to have considered that when it is explicitly mentioned that certain things to be done in a particular manner in a statute anything which has not been mentioned, stands excluded. Therefore, when an opportunity of hearing has not been provided for in the amended proviso to Section 110(2) of the Act and has been excluded the said principle cannot be inserted into the statute and on that ground the order could not have been interfered with. In support of such contention, the Learned Standing Counsel placed reliance on the decision of the Constitution Bench in *Union of India Vs. Tulsiram Patel* 1985 3SCC 398. This decision was pressed into to service to support the argument that the right to prior notice and an opportunity to be heard before an order is passed if would obstruct taking of prompt action, such right can be excluded and this right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion and the right of *audi alteram partem* cannot be invoked, if imparting, it would have the effect of paralysing the administrative process or where the

need for promptitude or urgency of taking action so demands. Reliance was placed on the decision of the Hon'ble Supreme Court in *Ajit Kumar Nag Vs. General Manger (PJ), Indian Oil Corporation Limited* 2005 7SCC 764 for the same proposition that opportunity of hearing can be excluded. Reliance was placed on the decision of the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company* 2018 (361) E.L.T. 577 (S.C) to support the arguments that in a taxation statute there is no room for any intendment and equity has no place in interpretation of the statute. Reliance was placed on the decision of the Hon'ble Supreme Court in *The Commissioner of Sales Tax, Uttar Pradesh, Lucknow, Vs. M/s, Parson Tools and Plants, Kanpur*, AIR 1975 SC 1039, for the proposition that when the legislature clearly declares its intent in the scheme and language of a tax statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting it or implying anything which is not congenial to or consistent with which express intent of the law giver more so, if such statute is a taxing statute. Thus, it is submitted that the object of the enactment namely the Customs Act has to be borne in mind and if the interpretation given by the Learned Writ Court has to be accepted, it will cause great prejudice to the proceedings initiated by the authorities and investigation will be hampered. Further, it is submitted that the respondent/writ petitioners have not been put to any prejudice on account of the extension made, as relief under section 110A was always available to them. On the above grounds, the Learned Counsel for the appellant/revenue prayed for setting aside the order passed in the writ petition and dismissing the same.

18. Mr. N.K. Chowdhury, Learned Counsel appearing for the respondent writ petitioner seeks to sustain the order passed in the writ petition, by contending that the period of 6 months from the date of seizure of the three export consignments expired on 17.04.2020 and no notice under Clause (a) of Section 124 of the Act had been issued to the respondents with respect to seized goods and therefore the proviso to Section 110 (2) of the Act is applicable to the goods of the respondents. It is submitted that the proviso to Section 110 (2) of the Act had been substituted with effect from 29.03.2018 and the new provision has been introduced and by virtue of such substitution there is an added responsibility on the appellants while extending the time limit for issuance of Show Cause Notice under section 124 (a) of the Act. The power given under proviso to Subsection (2) of Section 110 of the Act contemplates an enquiry and the authorities cannot mechanically exercise such power and there should exist sufficient cause necessitating the extension of time. Further, it is submitted that the respondents are entitled to an opportunity to controvert the facts on record before such extension of time is made and the authority cannot act in a mechanical and arbitrary manner. Relying on the decision in *Charan Das Malhotra* (supra) it is submitted that the power under the proviso to Section 110 (2) cannot be exercised without granting prior opportunity to the respondents and such legal position has remained the same even after the amendment. Further, by placing reliance on the decision in the case of *Bibhuti Bhushan Bagh* (supra) it is submitted that the mandatory procedure to be followed before exercising the power under the proviso to Section 110 (2) of the Act has been clearly laid down keeping in view of the two judicial

pronouncements which were relied upon by the Learned Counsel for the respondent. It is submitted that the amendment which has been brought out in the proviso by way of substitution has to be read in consonance with the guidelines issued by the Hon'ble Supreme Court in the aforementioned decision. Therefore, it is submitted that the Learned Single Bench was right in holding that the appellants are required to adhere to the principle of natural justice while exercising power under section 110 (2) of the Act and by virtue of the amended proviso two additional burden have been fastened upon the appellant. Further it is submitted that the Learned Single Bench was right in coming to the conclusion that the amended proviso does not obviate the requirements of adherence to the principle of natural justice while power under section 110 (2) of the Act is exercised. Therefore, without providing an opportunity of hearing to the respondents from whom the goods were seized such power could not have been exercised and therefore the Learned Single Bench rightly allowed the writ petition at the same time, granting liberty to the appellants to take steps in accordance with law. The Learned Counsel submitted that in the decision relied on by the Learned Counsel appearing for the appellant in *Swees Gems and Jewellery* the question of law which was framed is as to whether the tribunal fell in error in holding that the goods had to be released as, no notice preceded the extension of detention under the proviso to Section 110 (2) of the Act and while answering such question the Court held that no separate notice is contemplated before extending the period of limitation by further six months. However, the respondents have been claiming for an opportunity of

hearing and therefore, the decision relied on by the appellants is distinguishable.

19. We have heard the Learned Counsels for the parties and carefully perused the materials placed on record.

20. The legal issue involved in the instant case is with regard to the interpretation of the proviso in section 110 (2) of the Act. The said provision as it originally stood is as follows:-

1)

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, 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. (emphasis supplied)*

21. The above proviso stood amended with effect from 29.03.2018 which is as follows:-

*“Provided that the Principal Commissioner of Customs or Commissioner of Customs may, **for reasons to the 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” (emphasis supplied)*

22. As could be seen from the above, the proviso to Section 110 (2) as it originally stood, that is prior to 29.03.2018 conferred power on the authority to extend the period of issuance of Show Cause Notice under section 124 (a) of the Act by further period not extending 6 months on “*sufficient cause*” being shown. The important change that has been brought about by the amendment with effect from 29.03.2018 is that the authority can extend the period of issuance of Show Cause Notice for a further period of 6 months by recording reasons in writing and inform the person from whom such goods were seized before the expiry of the period so specified. The question would be whether in terms of the amended proviso the person from whom the goods were seized is entitled to be heard before the time for issuance of Show Cause Notice is extended by the authority. The respondents case rests upon the two decisions namely *Charan Das Malhotra and Bibhuti Bhushan Bagh*. To be noted, both the decisions were rendered prior to the amendment brought about to the proviso to Section 110 (2). The argument of the Learned Counsel for the respondent which was accepted by the Learned Writ Court that despite the amendment brought about in the statute the two decisions are relevant and the respondents from whom the goods were

seized are entitled to be heard before an order of extension is made, extending the period for issuance of Show Cause Notice under section 124 (a) of the Act within the original period of 6 months. The subtle yet marked the difference in the proviso prior to the amendment and post amendment is of significance. The proviso as it originally stood mandates “*sufficient cause*” being shown by the authority before the order of extension for issuance of Show Cause Notice is made. After the amendment, the statute specifically states that the authority may for reasons to be recorded in writing extend the period for issuance of the Show Cause Notice by a further period not extending 6 months and inform the person from whom such goods were seized, before the expiry of the period so specified. Therefore, it is to be considered as to whether the amended proviso which provides for recording reasons in writing and informing the person from whom the goods are detained would require an opportunity to be granted to such person prior to passing the order of extension. The reasons which weighed in the minds of the Learned Single Judge is that amended proviso does not obviate the requirements of adherence to principle of natural justice which would mean that the respondents are entitled to an opportunity before extension is granted. The question would be whether such intendment can be read into the amended proviso to Section 110 (2) of the Act.

23. The Hon’ble Supreme Court in the celebrated decision in the case of *Tulsiram Patel* while answering the question as to whether the principle of natural justice be modified or in exceptional cases can it even be excluded to be read that the rule of *audi alteram partem* is a subject to the doctrine of

necessity and yields to it as pointed out by the Hon'ble Supreme Court in *J. Mohapatra & Co. Vs. State of Orissa. (1984) 4 SCC 103*. It was held that where a right to prior notice and an opportunity to be heard before the order is passed would obstruct taking of prompt action such a right can be excluded. Such a right can also be excluded where action is to be taken its object and purpose and the scheme of the relevant statutory provisions warrants its exclusion nor can the *audi alteram partem* rule to be invoked, if importing it would have the effect of paralyzing the administrative process or where the need for promptitude or urgency of taking action so demands.

24. The proviso as it stood prior to the amendment specifically provides for "sufficient cause being shown" the authority can extend the period for issuance of Show Cause Notice. This expression was interpreted in *Charan Das Malhotra* as well as in *Bibhuti Bhushan Bagh* to mean that although the decision of the authority as to the sufficiency of materials before him may be within his exclusive jurisdiction, it is nonetheless difficult to comprehend as to how he can come to a determination unless he has before him the pros and cons of the question and interpreted the determination by the authority for extension of time to expose his decision to one side and perhaps one based on an incorrect statements of facts. It was further held that the difference in the language used in the first of limb of the proviso to the sub-section 2 would lend support to the contention that the power in one case may be subjective and therefore, not calling for an enquiry, and the power in the other is one the exercise of which necessitates an enquiry into materials placed before the authority for his determination and therefore, the Hon'ble

Supreme Court concluded that the power under the proviso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized. It was further held the right to notice flows not from the mere circumstance that there is a proceeding of judicial nature, but indeed it goes beyond for the reasons that a right of person are likely to be prejudicially affected, he is entitled to be an opportunity to put forward his case. Therefore, it was held that the person from whose possession the goods have been seized is entitled to notice of the proposal before the authority for the extension of the original period of 6 months mentioned in Section 110 (2) of the Act and he is also entitled to heard upon such proposal, subject to the restrictions that he is not entitled to information as to the investigation which is in process, because there can be no right in any person to be informed midway, during an investigation of the materials collected in the case against him and moreover there is a need for maintaining confidentiality of the investigation proceedings.

25. As pointed out by the Hon'ble Supreme Court in *Tulsiram Patel* the rule of *audi alteram partem* is subject to doctrine of necessity and yields to it, if prior notice and opportunity of being heard, before an order is passed would obstruct taking of prompt action such a right can be excluded. Similarly, the right can be excluded, where the nature of the action to be taken its objects and purposes and the scheme of the relevant statutory provisions warrants its exclusion. Further, if issue of notice would have the effect of paralyzing the administrative process or when there is a need for promptitude or urgent action such opportunity can be excluded. The

bedrock of the decisions in *Charan Das Malhotra* and *Bibhuti Bhushan Bagh* is that issuance of the Show Cause Notice under section 124 of the Act is a quasi-judicial order and delay in issuance of Show Cause Notice would cause prejudice to the interest of the party whose goods are detained or the person who has interest in the goods. Thus, we are required to note the marked distinction in the proviso as it originally stood prior to the amendment. As mentioned earlier, the phraseology in the proviso to Section 110 (2) is “sufficient cause being shown” and this phraseology was subject matter of interpretation in *Bibhuti Bhushan Bagh* and *Charan Das Malhotra*. However, the amendment only provides for “*recording of reasons in writing*” and “*information to the persons*” from whom the goods were seized. This marked change in the phraseology of the proviso cannot be ignored. Sufficient cause has always been interpreted to mean that there should be a proper and object consideration which phraseology is absent in the amended proviso to Section 110 (2) as it provides only for recording of reasons in writing and informing the persons from whom the goods were seized before the expiry of the period so specified. Therefore, the legislators in their wisdom while amending the proviso by substituting it with a new proviso had specifically done away with the providing of a notice or an opportunity before making the order of extension for issuance of Show Cause Notice. The proviso as it originally stood had not specifically provided for information being furnished to the persons from whom the goods were seized before the expiry of the period so specified. The Court while interpreting the statutory provisions cannot ignore this marked change brought about in the statute. Therefore, in our considered view the decision

in the *Charan Das Malhotra vs. Bibhuti Bhushan Bagh* cannot render assistance to the respondents/writ petitioners while interpreting the amended proviso. The amendment has made a sea change in the requirements to be complied with prior to passing order extending time for issuance of the Show Cause Notice. Precisely for these reasons, the Hon'ble Supreme Court pointed out that when prior notice of opportunity to be heard before the order is passed would obstruct in taking of prompt action such right can be excluded. We are conscious of the fact that the present proceeding is under the provision of the Customs Act 1962, and if the legislature in their wisdom excluded issuance of a Show Cause Notice the same cannot be read to mean otherwise.

26. In *Swees Gems and Jewellery*, the consignments imported by the respondents therein were seized under section 110 of the Act, on a reasonable belief that they are liable for confiscation under section 111 of the Act, the show cause notice was not issued within the 6 months from the date of detention of the goods and DRI requested for extension of period of issuance of Show Cause Notice by another 6 months under the proviso to Section 110 (2) of the Act for the reasons which was outlined in its letter to the Commissioner of Customs pointing out various difficulties and impediments in not being able to issue the Show Cause Notice within the prescribed time of 6 months. The respondent therein contended before the tribunal that no Show Cause Notice was given to them and no opportunity of being heard was afforded before extending the time limit for issuance of the Show Cause Notice. Reliance was placed on the decision in *Bibhuti*

Bhushan Bagh and other decisions on the point. The revenue supported the extension granted by the Commissioner pointing out the amendment which was brought about in the proviso to Section 110 (2). The Tribunal compared the pre-amended proviso to and post amendment and allowed the assessee's appeal on the grounds that the Show Cause Notice cannot be dispensed under the new prior proviso to Section 110 (2). The order was challenged before the Hon'ble Court on various grounds which in fact were urged before us by the Learned Standing Counsel for the appellant in this appeal. The Court after examining the proviso before and after the amendment held as follows:-

- 1) *The reasoning of the Supreme Court was primarily based on the fact that issuance of show cause notice (i.e under Section 124) is part of a quasi-judicial or judicial act and consequently, the delay in its issue can at times, be prejudicial to the interests of the party or importer, who has an interest in the goods. The observations of the Court are pointed, with respect to the nature of the goods and the information about their condition, which the party likely to be affected might possess. This court is also alive to the fact that Section 110 confers a general power of detention of goods : thus, all classes of life can be implicated. Yet, the Court has to also be alive too the fact that I.J. Rao (supra) was premised upon the phraseology of Section 110 (2), and the power of extension being conditioned "on sufficient cause being shown" which was the subject matter of the Court's discussion. Now, the amendment has done away with that*

expression; the power to extend 9the period of detention) after amendment states that, “if the 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.”

- 2) *The change in the statute, in the opinion of this Court, is a significant one. The previous provision required the Commissioner to show sufficient cause, which meant that such cause had to be based on objective considerations. However, the amended provision merely requires the Commissioner to record the reasons in writing and “inform the persons from whom such goods were seized before the expiry of the period so specified.” In this Court’s considered view, the amended provision deliberately sought to overbear the previous view that a notice before extension was necessary. Now two conditions are to be satisfied : one, the Commissioner has to record his reasons in writing, why the extension is necessary, an two, inform the person from whom such goods were seized before the expiry of the period so specified. The latter condition is equally important in the opinion of this Court, because it is pre-requisite for the exercise of the power of extension. The pre-amended provision was silent on this aspect.*

- 3) *There are other reasons for this Court to hold that the amendment brought about a radical change in the law. Parliament had knowledge-or is deemed to have knowledge of the existing state of law, which required notice, before extension. Therefore, the change*

of terminology is significant; the amendment has resulted in only two conditions, being insisted upon-primarily that the Commissioner should record his reasons, before the expiry of the period of limitation and should inform those reasons to the party concerned.

- 4) *Besides, this Court also notices that Parliament, aware of difficulties that might be faced by importers of goods, which might be seized, also provided, through an amendment in 2006, the facility of provisional release. Section 110A, enacted for this purpose, reads as follows:*

“110A. Provisional release of goods, documents and things seized pending adjudication.- Any goods, documents or things seized under section 110, may pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.”

- 5) *These developments, in the opinion of the Court, resulted in a complete change of law, on the aspect. Section 110(2) too has not remained unaffected, a second proviso has been added, which states that:-*

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

6) *The effect of these amendments, is that the rigour of unamended Section 110(2) has been softened. Now, a person, whose goods are detained, can claim provisional release. At the time when I.J Rao was decided, that facility was not available. Seen in the context of these facts, it is apparent that a textual reading of Section 110 (2) would lead one to conclude that no separate notice is necessary, before extending the period of limitation by a further six months (for issuance of show cause notice); the authority has to record reasons in writing, which of course, should be based on materials and inform the concerned party about the extension before the expiry of the first period of six months. At this stage, it is necessary to also notice that even in I.J.Rao (supra) the Court recognized that not all reasons can be disclosed, because investigative processes and information gathering can be confidential.*

27. In our considered view the above decision would apply with full force to the case on hand. The Court rightly noted that the rigour of the unamended Section 110 (2) has been softened and that apart as the statute stood as on date the person from whom the goods are seized can claim for provisional release of the goods, while at the time when the decision in *I.J. Rao, Assistant Collector of Customs Vs. Bibhuti Bhushan Bagh* were rendered such facility was not available. Therefore, the Court held that no separate notice is necessary before extending the period of limitation by a further 6 months. The above decision rightly lays down the legal principle and we respectfully agree with the said decision.

28. While on the issue, it will be relevant to take note of the decision of Hon'ble Supreme Court in *Dilip Kumar Das and Company* wherein it was held that when words in statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences and it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The Hon'ble Supreme Court held as follows:-

- 1) *The well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*
- 2) *We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and literal or plain meaning test. The other tools of interpretation, namely contextual or*

purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inference while considering a taxation statute.

29. The other tools of interpretation namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting materials especially in taxation statutes where equity has no place.

30. The order dated 24.06.2020, impugned in the writ petition is a speaking order by recording reasons in writing. After elaborately setting out the facts and the outcome of the investigation, the revenue had referred to Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, by virtue of which the time limit for issuance of Notice, as specified in or prescribed or notified under the Customs Act which falls during the period from 20th day of March, 2020 to 29th day of June, 2020, has been extended until 30.06.2020. The reason so recorded in the order dated 24.06.2020 has

not been questioned by the writ petitioners, nor the writ court has commented upon the same. Hence we hold that the order dated 24.06.2020, extending the period for issuance of show cause notice is valid on all counts.

31. The Learned Counsel for the writ petitioners during the course of arguments submitted that though application for provisional release of goods was made, the same was not considered. This issue is no longer of relevance as the final order of adjudication dated 21.09.2020 has been passed and the goods have been confiscated.

32. For all the above reasons, we are of the considered view that the decision rendered by the Learned Writ Court calls for interference.

33. In the result, the writ appeal is allowed and the order passed in writ petition is set aside. Consequently the writ petition stands dismissed.

34. We make it clear that this judgment and order shall not prejudice the right of the respondents/writ petitioners in challenging the order of adjudication dated 18.11.2020 except on the issue which was canvassed before us in this appeal which we have answered against the respondent. No cost.

(T.S. SIVAGNANAM, J)

I agree.

(HIRANMAY BHATTACHARYYA, J)

(P.A- SACHIN)