

Plating Material Manufacturing Vs. Cc

Plating Material Manufacturing Vs. Cc

SooperKanoon Citation : sooperkanoon.com/15668

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-20-1999

Reported in : (1999)(85)LC232Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Plating Material Manufacturing

Respondent : Cc

Judgement :

Section 124 of the Customs Act requires issue of a Show Cause Notice before adjudging confiscation of goods etc. seized under Section 110 of the Act. Sub-section (2) of Section 110 stipulates that where such notice is not given within six months, from the date of seizure of the goods, the goods are liable to be returned to the person from whose possession they were seized. The proviso to the sub-section however, empowers the Commissioner of Customs, to sufficient cause is shown that the Show Cause Notice not be issued within the stipulated period.

2. In the present case the offending goods were detained on 29.4.1998, and were formally seized on 27.5.1998. Such detention is provided for in terms of the proviso to Sub-section (1) of Section 110. On 26.10.1998, a notice was issued to Shri Bipin Parekh, Partner of the appellant company to show cause why the time limit for issue of the Show Cause Notice not be extended by two months. This notice was received by Shri Parekh on 26.10.1998 at about 2 p.m. The notice required him to attend the office of the Commissioner for hearing at 11 a.m. on J

27.10.1998. Shri Parekh did not attend the proceedings nor was a written submission made by him before the Commissioner. The Commissioner passed an order on 27.10.1998 extending the period for issue of Show Cause Notice by two months from 28.10.1998. The appeal and application for stay of the operation of this order were filed.

When the stay application came up for hearing today, Shri A.S. Sunder Rajan Id. counsel requested for disposal of the appeal. With the consent of the revenue this was done.

3. Shri Sunder Rajan, counsel recalling the events as recorded above, claimed that there was no justification for the Commissioner to extend the period when he had had six months to conduct the enquiry. He claimed that the Commissioner acted in undue haste, did not allow sufficient time for the noticee to respond and in doing so denied natural justice to the applicant. He also states that the manner of service of the notice was not in terms of Section 153 of the Act.

5. We have considered the various submissions made. It is not denied that a notice was served on Shri Bipin Parekh a day prior to the scheduled hearing. We observe that nothing prevented Shri Bipin Parekh from making a protest either in person or in writing. Shri Sunder Rajan informs us that on receiving the notice Shri Parekh contacted him on telephone and that the Id. Counsel faxed the submissions to the Commissioner. He has showed a copy of the fax which he issued at 3.21 p.m. on 27.10.1998 from Chennai i.e. after the Collector had passed the order. Shri Bipin Parekh was aware of the time given to him. If he chose to follow a path which would not enable him to make an effective representation within the time given, the Commissioner certainly cannot be blamed. On perusal of the sequence of the events and documents, we do not accept the plea that there was a denial of natural justice.

6. The Show Cause Notice gave the reason why the Commissioner could not V complete the investigations within the six months of the seizure of the goods. Paragraph 4 of the Show Cause Notice is eloquent enough in showing how Shri Parekh did -Dt go to the office of the Commissioner.

As regards Section 153 of the Act, we find that personally tendering the notice to the recipient is the first avenue prescribed therein.

7. We have also seen the citation placed before us by the Id. counsel in the case of A.C. of Customs v. Charan Das Malhotra 1983 ELT 1477 (SC) : 1973 June Cen-Cus (i) : ECR C Cus 790 SC. We find in that case the Collector had passed the orders of extension nearly one month after the proper period had expired. The facts of the cited case are not the same as in the case before us.

8. On perusal of the material and the stipulations of the law, we find that the Commissioner was within his rights to make the Order, that he had given adequate opportunity to the appellants to state their case and that the Commissioner had chosen to extend the date only by two months even when the law permitted him the allowance of six months. On these observations, we dismiss this appeal. The stay application also stands disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com