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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th December, 2024

+ **W.P.(C) 7510/2024**

BONANZA ENTERPRISESPetitioner

Through: Mr. Prem Ranjan Kumar, Adv.
versus

THE ASSISTANT COMMISSIONER OF CUSTOMS & ANR.

.....Respondents

Through: Mr. Aakarsh Srivastava, Standing
Counsel for Customs with Adv Anand
Pandey, Adv. (M-9871094948)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner-Bonanza Enterprises for quashing the impugned Order-in-Original dated 10th November, 2022, numbered - 187/2022/ASSTT.COMMR/EXP./ICD/TKD.
3. The Petitioner is an exporter of readymade garments including printed scarves etc. The case of the Petitioner is that it has been in business since 2001 and it had made certain exports to a Dubai based entity for MMF Printed Scarves by various Shipping Bill Nos. bearing 8869092, 5568084, 8868090, 8868098, 8868094, 8868082 and 8868086 all dated 25th September, 2017 with the total Free On Board (‘FOB’) value of Rs. 3,72,96,859.60/- and total drawback amount claimed as Rs. 36,55,092.25/-.
4. According to the Petitioner, there were certain earlier inspections of the



export consignments conducted by the Department of Revenue Intelligence ('DRI') at the Mundra Port and representative samples of the export goods were drawn for further investigation and the clearance of goods have been put on hold. The said proceedings was going on with the Department and an Order-in Original was passed pursuant to a Show Cause Notice ('SCN') dated 26th March, 2018. The said Order-in Original dated 19th November, 2020 was issued by the Adjudicating Authority, rejecting the contentions of Petitioner and imposing penalty.

5. The said matter was in statutory appeal before the Ld. Commissioner of Customs (Appeals) against the Order-in-Original dated 19th November, 2020 and in the process of those proceedings the Petitioner was informed that the Order-In-Appeal No. CC(A) CUS/D-II/EXP/ICD/TKD/1152 dated 23rd September, 2021 was passed wherein the Appeal was allowed and the Order-in-Original dated 19th November, 2020 was set aside. The said order also set aside the penalties and redemption fine as a relief. In view of the order-in-appeal dated 23rd September, 2021, the Petitioner vide letter dated 29th December, 2021 requested the Respondent No. 2 release the pending drawback and credit the same. The said letter was communicated to the Assistant Commissioner (IGST) and the same was accepted by the competent authority.

6. Thereafter, the Petitioner requested the Office of the Deputy Commissioner of Customs (Recovery) to issue no dues Certificate. However, the Petitioner is stated to have not received any reply. Eventually, the Petitioner received a letter from the Assistant Commissioner (BRC Cell) on 24th March, 2022, requesting submission of export proceeds details in the prescribed format and coordination with their bank for EDPMS updates.



Subsequently, the Petitioner obtained certificates from the respective banker certifying the realization and upload of export proceeds from 1st April, 2014 to 31st March, 2018. The said documents were submitted to the Assistant Commissioner, however it is stated that the duty drawback amount remained unpaid.

7. In view of the non-payment, the Petitioner approached the High Court via **W.P. (C) No. 10459/2022**, leading to multiple hearings and assurances from the Respondent to process the drawback. While the drawback was eventually released, other consequential benefits remained pending, prompting further Court directions and adjournments for compliance.

8. In the meantime, the Petitioner received an Order-in-Original dated 10th November, 2022 wherein the allegation of the Customs Department was that in respect of certain exports which were made by the Petitioner, the actual realization of the amount in foreign exchange was belated and duty drawbacks could not have been availed by the Petitioner. Thus, the allegation in the impugned Order-in-Original was that there was a violation of Section 75 (1) of The Customs Act, 1962 (hereinafter, “*Customs Act*”) as also of Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 and Rule 18 of the Customs and Central Excise Duties Drawback Rules, 2017. The impugned Order-in- Original has been assailed before this Court both on procedure and on merits.

9. It is the case of the Petitioner that the Show Cause Notice which is the basis of the impugned Order-in-Original dated 26th August, 2022 was never received by the Petitioner. In fact, as per the Department, notices for personal hearing were stated to be issued which however were never received by the Petitioner.



10. Ld. Counsel for the Petitioner, Mr. Prem Ranjan Kumar submits that whenever clarification was sought by the Department, the same was duly replied to by the Petitioner. All the payments which were received in foreign exchange were submitted to the Department. Surprisingly, though the Department had all the proper contact details of the Petitioner neither the Show Cause Notice nor the hearing notices were received. In addition, it is submitted by Ld. Counsel that for each of the Shipping Bills, the payments have been received and the same are duly certified by the concerned Bank as well.

11. On behalf of the Respondent, Mr. Akash Srivastava, Standing Counsel for the Department submits that whenever exporters send Shipping Bills, the amount of foreign exchange has to be realized within the statutorily prescribed period as per the rules. However, if there is a delay beyond the period prescribed in the Rules, on certain occasions, an extension for the same can be sought. He submits that, in the present case, no extension was sought by Petitioner.

12. In addition, it is submitted by Ld. Counsel that the Show Cause Notice and the hearing notices dated 13th September, 2022, 20th September, 2022, and 27th September, 2022 were issued in terms of Section 153 of The Customs Act, and also pasted on the board of the Customs Department. However, none appeared for the Petitioner resulting in the Order-in-Original being passed.

13. On a specific query to Mr. Aakarsh Srivastava, as to whether the Show Cause Notice and hearing notices were issued by email, it is submitted that under Section 153(b) of the Customs Act, it is to be issued through registered post or speed post and the same has been complied with. However, no email was sent to the Petitioner.



14. The Court has considered the matter. As per the Order-in-Original, the duty drawback to the tune of Rs. 2,39,83,219/- has been held to be recoverable and interest and penalty has also been imposed upon the Petitioner. The amount is substantial.

15. The Court has also seen the documents which have been placed on record including the bank certificates which show that the amounts from the exports in the form of foreign exchange has been realised, though at a later stage, with some delay. All these aspects ought to have been considered by the Department before passing the Order-in Original. However, the same was not possible as the Petitioner was not served with the Show Cause Notice or the hearing notices. No reply to the SCN was filed and no hearing was actually held.

16. At this stage it is relevant to extract Section 153 of the Customs Act which reads as under:-

“153. Modes for service of notice order, etc.--(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:--

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as



provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

[(ca) by making it available on the common portal;]

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]”

17. A perusal of the said provision would show that one of the modes for service under Section 153(b) of The Customs Act is through registered post, speed post or courier, however, it can also be sent through email in terms of Section 153(c) of The Customs Act. In addition, from 2021 onwards, notices and hearing notices can also be made available on the common portal as well.

18. From the impugned Order-in-Original which has been passed it is unclear as to whether the Petitioner was ever served by email. In fact para 9 and 10.3 of the impugned order reads as under:-



“9. As per case records, no reply to the show cause notice was received from the exporter and the SCN was returned by the postal Deptt. With the remarks of “left without instructions”/ The exporter was given opportunity of personal hearing on 13.09.2022, 20.09.2022 and 27.09.2022 but the letters of personal hearing were also returned undelivered by the postal Deptt. With the remarks “left without instructions”. Further, neither the export appeared for Personal hearing nor did submit any reply to the show Cause Notice till date.

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“10.3 I find that the show cause notice and personal hearing was served to the exporter as per Section 153 of the Customs Act, 1962. It is also found that the said SCN and personal hearing letter also display at the notice board of this office, as per Section 153 (b) of the Custom, Act, 1962, I find that the SCN and personal hearing letter was undelivered by the Indian Post from this exporter M/s Bonanza Enterprises, and its Directors/ Partners Sh. Shkir Yakub Lodhia, as remark mentioned as "Left without instructions".

19. A perusal of Para 10.3 would show that the notice appears to have been sent under Section 153(b) of The Customs Act and on the display board of the Customs Department. Section 153 (b) only records notice by post or courier and not via email.

20. In the opinion of this Court, the provision itself makes it clear that notices can be sent by email. Moreover, it is also unclear as to why all the notices which were sent have been returned as the Petitioner has categorically stated that there was no change of address.

21. This entire delay and non-appearance could have been completely avoided if the notices were sent by email to the Petitioner.



22. The Customs Department ought to in future follow a system by which in addition to notices by speed post, registered post or courier, notices are also sent on the email address which is provided on the letterhead of the Petitioner or any authorised person. This would avoid substantial delay and matters proceeding *ex-parte* as has happened in the present case.

23. In the overall scheme of things and the facts which have emerged, this Court is of the opinion that owing to the fact that as per the Petitioner the entire amount of the shipping bills and foreign exchange have been realized, the Petitioner ought to be given an opportunity to reply to the Show Cause Notice and a hearing may be afforded to the Petitioner.

24. The impugned order dated 10th November, 2022 is set aside. Let a fresh show cause notice be served upon the Petitioner on the email address. In addition the said show cause notice shall be served upon the Id. Counsel appearing for the Petitioner within one week.

25. The reply to the Show Cause Notice may be furnished within four weeks. The Petitioner shall also be heard. Considering the delay that has already taken place, let the show cause notice be adjudicated within three months.

26. The petition is disposed of. Pending applications, if any, are also disposed of.

27. In the opinion of this Court, in order to avoid improper service to parties and to avoid *ex-parte* proceedings, it is incumbent that service of notices, communications and orders ought to be effected even through email and on the common portal, in addition to the traditional methods as per Section 153. Let the present order be communicated to the Chairman, Central Board of Customs and Indirect Taxes by the Id. Standing Counsel (Customs) so that



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the mandate of the provision of Section 153(b) and (c) for communication of notices, orders etc., by email as also uploading on the Directorate General of Foreign Trade (DGFT) common portal can henceforth be given effect to.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 19, 2024/nk/sc/bh