

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH : COURT NO - 3

Customs Appeal No. 12201 of 2014-DB

(Arising out of OIO No. 02/COMMR/DRI/2014 dated 28.02.2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

Kalpesh Daftary

301, Shubhagan, 14, Swastik Society,
2, Jvpd Scheme, Vile Parle West,
MUMBAI,
MAHARASHTRA,

...Appellant

-Versus-

C.C.-Ahmedabad

CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

...Respondent

Present For the Appellant : Shri Hardik Modh, Advocate

Present For the Respondent : Shri T.G. Rathod, Joint Commissioner (Authorised Representative)

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/10520/2020

Date of Hearing: 11/02/2020

Date of Decision: /2020

RAMESH NAIR

This appeal is directed against order in original no. 02/COMMR/DRI/2014 dated 28.02.2014 whereby the penalty of Rs. 3,40,00,000/- under section 112(a) and Rs. 1,45,00,000/- under section 114AA was imposed on the appellant for his alleged involvement of forged/fake VKGUY/DEPPB license and imports thereunder.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the appellant made a preliminary submission that the Adjudication Order was passed under gross violation of natural justice. He submits that the Show Cause Notice was issued on 05/11/2012. The appellant sought time of 6 weeks vide his letter dated 05/12/2012 during the time when he was out of jail on temporary bail. The appellant further sought extension of two weeks for filing reply vide letter dated 14/12/2012. The appellant filed reply dated 16/01/2013 through jail and he further filed an additional reply dated 06/02/2013 through jail. He was granted bail on 09/05/2013. Thereafter the personal hearing notice dated 20/01/2014 and 28/01/2014, were sent to Sabarmati jail. However the appellant had already been released from the jail on 09/05/2013. Therefore, hearing notices were not received by the appellant. Thereafter, adjudication order dated 28/02/2014 was passed and issued on

07/03/2014. In view of the above, the appellant was not given proper opportunity of personal hearing and his request for cross examination was also not considered. Therefore, there is a gross violation of natural justice.

3. Shri T.G. Rathod, Learned Joint Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have heard both sides and perused the records. We find that as per the facts narrated by the learned counsel, this appeal may be disposed of only on the ground of natural justice. Therefore, we are not going into the merit of the case. We find that though two hearing notices were issued but the same were sent to the jail, whereas the appellant was released prior to the date of hearing notice. Therefore, the hearing notices were not served to the appellant. It is also observed that the appellant has sought for cross examination of various witnesses in his reply submitted through jail to the Adjudicating Authority but the same was also not considered. In this position, we find that there is clear violation of natural justice. Therefore, ex-parte order passed by the Adjudicating Authority will not sustain. Accordingly, we set aside the impugned order in respect of this appellant and remand the matter to the Adjudicating Authority for passing a fresh order after granting sufficient personal hearing. The appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha