CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Custom Appeal No. 53412 of 2018-SM

(Arising out of order-in-original No. 13/2018/RNS/COMMR./IMP/ICD/TKD dated 14.05.2018 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi).

Surinder Khanna **Appellant**
R/o 15A/37, 1st Floor, WEA Karol Bagh
New Delhi.

VERSUS

Commissioner of Customs (Import) **Respondent**
ICD, Tughlakabad, New Delhi.

APPEARANCE:

Ms. Archana Sharma, Advocate for the appellant
Shri Y. Singh, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50079/2020

DATE OF HEARING/DECISION: 13.01.2020

ANIL CHOUDHARY:

This appeal is filed against Order-in-original dated 14.05.2018 passed by the Commissioner of Customs (Import), ICD, Tughlakabad, New Delhi absolutely confiscating the goods valued at Rs. 7,04,000/- under Section 111(d) of the Customs Act, 1962, further personal penalty of Rs. 1 lakh on the appellant and penalty of Rs. 1,50,000/- each on Shri Bhimendra Kumar Goyal and Shri Rahul Goyal under Section 112 of the Customs Act, 1962.

2. Heard the parties.

3. Upon hearing the parties and on going through the impugned order, I find that there is no satisfaction recorded of service of show cause notice in the ex-parte order. Further, it is recorded in para 12 of the impugned order that there is no reply or written submission from any of the noticee. Further, personal hearing was fixed for appearance on 23.03.2017, 18.04.2017, 30.05.2017 and 26.07.2017.

4. As the fact of service of show cause notice is not recorded in the impugned order, this Tribunal directed learned AR to file evidence of issue and service of show cause notice dated 25.09.2015, issued by the Additional Director General, DRI, DZU, New Delhi. As per the report dated 03.06.2019 issued by the office of DRI, the show cause notice was served on one Shri Rohit Bhasin, who is said to be authorised by the appellant Shri Surinder Khanna to receive the show cause notice, at Karol Bagh. The said report has been forwarded to this Tribunal by the Principal Commissioner, ICD, Tughlakabad, New Delhi by letter dated C. No. VIII/ ICD/TKD/Rev./Imp/ Misc.11/2018/Pt. dated 06.06.2019. As per the copy of receipt issued by Rohit Bhasin dated 25.09.2015, it is stated that he has received the notice on behalf of the appellant who has authorised him, as he is outside India. However, no such authorisation has been given nor Revenue has taken any other steps for service of notice.

5. Considering the facts and circumstances and the requirement of service of show cause notice under the provisions of the Act, I hold that there is no effective service of show cause notice on the appellant. Further, I hold that the impugned order has been passed

without any jurisdiction. For assuming the jurisdiction to pass an adjudication order, service of show cause notice is must, as provided in law. In the present case, there is no proper authorisation neither Rohit Bhasin is a relative of the appellant, nor there being any proper authorisation to receive the show cause notice. Accordingly, the impugned order is set aside so far as this appellant is concerned. The appellant is entitled to consequential benefit in accordance with law.

(Dictated and pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Pant