

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Customs Appeal No. 52147 of 2022 - SM

(Arising out of Order-in-Appeal No. 30(SM)CUS/JPR/2022 dated 10.03.2022 passed by the Commissioner (Appeals), Central Excise & CGST and Customs, Jaipur)

**M/s Shree Rishabhdev Marble and
Minerals Private Limited**

Gaurav Path, N.H. 8, Bhuwana,
Udaipur (Rajasthan)

Appellant

VERSUS

**Commissioner of Customs (Preventive)
Jodhpur, HQ at Jaipur**

Respondent

Appearance

Shri Bipin Garg & Ms. J. Kainaat, Advocates – for the Appellant.

Ms. Tamana Alam, Authorized Representative – for the Respondent.

CORAM : **HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)**

DATE OF HEARING/DECISION : 21/02/2023

Final Order No. 50166/2023

Somesh Arora

When the matter was called, learned Advocate appearing for the party brought to the notice of the Court that the issue arises from a letter dated 6.1.2020 by which Department sought to withdraw the permission granted to them dated 13.6.2019 for allowing job work in DTA. The letter clearly mentions that the permission sought to be withdrawn since "it has come to the notice that M/s Shree Rishabhdev Marble & Minerals Pvt. Ltd. is violating the norms of 100% EOU scheme by diverting the material to DTA".

This letter does not indicate the basis of forming opinion and evidence of violations as on that date or any detailed narrative about what violation had taken place. This letter was actually treated as show cause notice by the Department for the purposes of present proceedings. The matter was agitated by the appellant even before the Hon'ble High Court of Rajasthan which was pleased to direct at the insistence of respondent – Department, to avail alternate remedy and, therefore, the present proceedings through Commissioner (Appeals) has come before this Court after the learned Commissioner (Appeals) confirmed in appeal the action proposed by aforesaid letter dated 6.1.2020 and ordered by original authority. It is also found that after the letter which was in the nature of administrative diktat was treated as show cause notice by the respondent – Department, the Department also conducted searches later on the premises of job worker as well as the appellant and found certain discrepancies in the stock position, which is the subject matter of another show cause notice and different proceedings.

2. The learned authorized representative opposing the position stated by the learned Advocate, reiterated the findings of the lower authorities and also emphasized the certain violations related to the stock position had come to the notice of the Department and learned Commissioner (Appeals) and are part of his findings and Department was under compulsion to take prompt action.

3. Considered. I find that the present proceedings before this Court emanate from a letter dated 6.1.2020 which cannot be treated as a proper show cause notice. No reason or evidence to

support the allegation has been brought on record by the respondent – Department, in the aforesaid letter. While the same has been collated, as per the contention of the learned authorized representative subsequently after search, as allegedly certain discrepancies were found which indicated violations. It, therefore, appeared to the Department that the imputations in the letter dated 6.1.2020 were later on found to be true. Same, however is a subsequent development, but at the time the show cause notice was issued, the allegation was merely based on suspicion. Clearly, therefore, there is violation of natural justice and manifestation of arbitrariness. Matter related to seizure at job worker premises is part of separate proceedings. For the purposes of the present proceedings before this Court, it is found that the show cause notice is improper and unsustainable and the proceedings based thereupon are liable to be set aside. It is, therefore, ordered accordingly. However, it is made clear that the Department in future, is free to consider rejection of the lapsed permission, if any conclusive evidence is available to them from the proceedings relating to seizure.

4. The appeal is allowed in above terms.

(Dictated & pronounced in Court)

(Somesh Arora)
Member (Judicial)

RM