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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/24 /2009, - CU[DB] Date **09/02/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S P.P.DUTTA WING CDR.(RETD.)

CUSTOM HOUSE AGENT, HOUSE NO. 1697, SECTOR
28, FARIDABAD, HARYANA.

M/S P.P.DUTTA WING CDR.(RETD.) Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/43/ 2012 CU[DB]** dated 18.01.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.

2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1,
NEW DELHI - 110 048.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road. Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 18.01.2012

Custom Appeal No. 24 of 2009

(Arising out of order in Original No. 72/2008 dt. 30.12.2008 passed by the Commissioner of Customs, New Delhi).

P.P. Dutta Wing Cdr. (Retd.) Appellant
Rep. by Sh. L.P. Asthana, Advocate for the appellants.

Vs.

CC, New Delhi Respondent
Rep. by Sh. K.P. Singh, DR for the respondent.

Coram: Hon'ble Sh. D. N. Panda, Judicial Member
Hon'ble Sh. Rakesh Kumar, Technical Member

Final ORDER No. C/A/43/12-Cus

Per: Shri D. N. Panda:

To the fundamental question as to whether the show cause notice dated 23.4.2008 brought the appellant to specific charges in terms of any of the clause under Section 112 of Customs Act, 1962, nothing was brought to our notice to prove that show cause notice had provided foundation to the adjudication. Ld. DR relied on para 5 of the show cause notice. He says that para comes to rescue of Revenue. We have gone into that paragraph and did not find intimate connection of the appellant to the offence alleged. Entire submission of Revenue is contradicted by appellant on the ground of no involvement of appellant and filing police complaint for misuse of its ~~the~~ name and for denial of justice without any foundation under received our attention.

section 112(a) or section 112 (b) of Customs Act, 1962 Appellant was deprived of leading its defence without proper foundation in show cause notice.

2. We find that when the charges were brought at page 12 under para 18 (c) of the show cause notice, the authority did not bring out under which sub-section or clause of section 112 of Customs Act, 1962 the appellant was required to lead defence. We are conscious that a show cause notice should not be read with hypertechnicality. Therefore, we tried find out from para 11 of the show cause notice as to whether revenue brought out its case. That para shows that the appellant defended at the pre-charge stage itself adducing evidence of job register claiming no involvement. It is only grievance of revenue in para 11 of the show cause notice that due diligence was not exercised. We would have appreciated such an ~~dissertation~~ observation had the manner and basis been brought out through appropriate violation of enacted provision of the law. For the misuse of name of appellant, it had pleaded that complaint was filed with Deputy commissioner of Police, South District on 30.6.2008. The enacted provision of Section 112 of the Customs Act, 1962 has provided two situations to penalize. Those are embodied in clause (a) and (b) of the said section. Nothing is whispered in the show cause notice in what manner the appellant was either to fall under Section 112(a) or 112(b). In absence of ~~no~~ clear evidence against appellant attracting the charge as per law, the show cause notice itself is misconceived and that failed to provide course of natural justice to the appellant to lead evidence.

Such an observation alone is enough to allow the appeal. Penalty proceedings are quasi criminal in nature. No one shall be dealt without clear charge in the show cause notice to lead defence. When show cause notice does not provide basis for defence that is violative of principles of natural justice. Accordingly, appeal is allowed.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant