CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 88142 of 2019

(Arising out of Order-in-Original No. 25/2018-19/RCB/CC/(X) dated 31.10.2018 passed by Commissioner of Customs (Export), Mumbai Zone-I)

K K Chaudhary .....**Appellant**
House No.5, Nijam Path Rukminigaon
Guwahati,
Assam – 781 023.

VERSUS

Commissioner of Customs, Mumbai Export-I .....**Respondent**
2nd Floor New Custom House,
Shoorji Vallabhdas Road, Ballard Estate,
Mumbai- 400001.

<u>Appearance:</u>

Shri Suyog Bhave, Advocate for the Appellant
Shri Manoj Das, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85895/2021

Date of Hearing: 18.03.2021
Date of Decision: 18.03.2021

PER : S.K. MOHANTY

This appeal is directed against the impugned order dated 31.10.2018, wherein the Ld. Commissioner of Customs (Export), Mumbai has imposed penalty of Rs.1,00,000/- (Rupees One Lakh only) on the appellant under Section 112 of the Customs Act, 1962. The appellant has assailed impugned order on the ground that no show cause proceedings were initiated against the appellant, seeking for imposition of penalty and no opportunity of personal hearing was granted before adjudication of the matter. Accordingly, it was contended that imposition of penalty in the impugned order cannot be sustained.

2. Heard both sides and perused the records.

3. On examination of the contents in the show cause notice, I find that the appellant herein was not issued with any notice, alleging contravention of the statutory provisions, justifying imposition of penalty under Section 112 *ibid* on him. Further, the copy of show cause notice dated 07.04.2015 had also not been served on the appellant, which is evident from page 63 therein. Furthermore, I also find that the appellant was not afforded any opportunity of personal hearing before adjudication of the matter. It is a settled position of law that for adjudication of any dispute, issuance of a show cause notice framing the charges of wrong doing by the person concerned is a condition precedent inasmuch as the noticee must know the charges made against him and should also get opportunity to defend its case. In this case, admittedly no show cause notice was issued to the appellant alleging the offences committed by it under the statute. Thus, under such circumstances, adjudication order passed in imposing penalty will not stand for judicial scrutiny.

4. Therefore, the impugned order imposing penalty on the appellant is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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