

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85013 OF 2016

[Arising out of Order-in-Original No: 31/ST/NGP-II/2015 dated 30th September 2015 passed by the Commissioner of Central Excise & Customs, Nagpur.]

Indo Unique Flame Limited
1st Floor, Kothari Building, 301 West High Court Road
Near Sudama Cinema, Dhampeth, Nagpur - 440001

... Appellant

versus

Commissioner of Central Excise & Service Tax
Nagpur – II
Telangkhedi Road, Civil Lines, Nagpur - 440001

...Respondent

APPEARANCE:

Ms Lalita S Phadke, Advocate for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A / 85330 /2022

DATE OF HEARING:	07/04/2022
DATE OF DECISION:	07/04/2022

PER: C J MATHEW

The limited issue for consideration in this appeal of M/s Indo

Unique Flame Limited is that order-in-original no. 31/ST/NGP-II/2015 dated 30th September 2015 of Commissioner of Central Excise & Customs, Nagpur – II Commissionerate has proceeded to determine tax liability of ` 1,13,21,769/- under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, and impose penalties under section 77 and 78 of Finance Act, 1994 without the preliminary requisite of affording them a hearing or even awaiting their response to show cause notice dated 14th October 2014.

2. Learned Counsel, while admitting that the notice had not been responded to, does contend that facts of the case and applicability of law thereto renders it impossible to arrive at a fair conclusion without considering alternative possibilities which the impugned order has not delved into.

3. It was pointed out by her that the adjudicating authority had, after taking note of delivery of the speed post article purportedly containing the notice on 20th October 2014 and recording the want of a written reply specifying desire to be heard in person, proceeded to issue the impugned order under the authority of section 33A of Central Excise Act, 1944 as made applicable to Finance Act, 1994.

4. Learned Authorised Representative submits that it is the responsibility of the noticee to respond in accordance with law and that this aspect, as mandated by section 33A of Central Excise Act,

1944, has been clearly brought out in the impugned order with the cavil of the appellant herein being devoid of merit.

5. We find that the impugned order has placed reliance on the decision of the Hon'ble Supreme Court in *Jethmal v. Union of India* [1999 (110) ELT 379 (SC)] and the decision of the Tribunal in *Patel Widecom India Ltd v. Commissioner of Customs(ICD), TKD, New Delhi* [2004 (170) ELT 16 (Tri.-Del.)]. In *re Jethmal* the issue arises from Sea Customs Act, 1878 which did not have a specific provision for issue of notice as exists in the present statute. The decision of the Tribunal in *re Patel Widecom India Ltd* arose from the refusal of the noticee to receive the show cause notice and is not in conformity with the circumstances in the impugned dispute.

6. We fail to perceive any justification for the peremptoriness of the adjudicating authority in foreclosing grant of opportunity to reply to the notice which would serve in disposal of the proceedings in a fair and judicious manner. On the contrary, he seems to have taken elaborate pains to controvert the essentiality of compliance with principles of natural justice. The haste, so demonstrated, is unseemly. We do not propose to dilate further on the inappropriateness of proceeding to adjudication without the benefit of some response from the noticee.

7. For that reason, we set aside the impugned order and remand

the matter back to the original authority for fresh adjudication after placing the appellant-noticee on notice of intent to take up, and complete, the adjudication process.

(Order pronounced in the open court on 7th April 2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*