

Rekha Patil

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 6368 OF 2019

M/s. Riddhi Siddhi Collection Through
its Proprietor Mr. Sunil Jain and Anr. .. Petitioners.
v/s.
Union Of India and Ors. .. Respondents.

Mr. Prakash Shah a/w Jas Sanghavi and Mr. Sangeeth Narayanan
i/b Prompt Legal for the petitioners.
Mr. Pradeep S. Jetly a/w Ram Ochani for respondents.

**CORAM: M. S. SANKLECHA, &
S. C. GUPTE, JJ.**

DATE : 19th JULY, 2019.

P.C:-

At the request of the parties, the petition itself is taken up for final disposal at the stage of admission.

2 This Petition, under Article 226 of the Constitution of India, challenges the order dated 13th July, 2018 passed by the Commissioner of Customs-respondent no.2 under the Customs Act, 1962 (for sake of brevity “the Act”) . The impugned order dated 13th July, 2018 has confirmed the show cause notice dated 15th December, 2016 demanding custom duty under section 28 of the Act. Besides the impugned order dated 13th July 2018 also imposes

penalty and confiscates the imported goods with option to redeem the same on payment of redemption fine under Section 125 of the Act.

3 The grievance of the petitioner is, the impugned order dated 13th July, 2018 passed by respondent no.2, Commissioner of Customs is an order passed in breach of principals of natural justice. This only for the reason that the show cause notice dated 15th December, 2016 as served upon the petitioner was incomplete, inasmuch as annexure 'A' and 'B' to the show cause notice were not annexed nor accompanied with the show cause notice as served upon the petitioner. The petitioner time and again requested for copies of annexure 'A' and 'B' to the show cause notice as both these annexures were an integral part of the show cause notice as they are statements computing the demand. Annextures 'A' and 'B' were made available to the petitioner only on 4th June, 2018 while fixing the personal hearing of the show cause notice dated 15th December, 2016 on 27th June 2018 . The petitioner by letter dated 26th June, 2018 requested the Commissioner to grant four weeks' time so as to file appropriate reply to the show cause notice dated 15th December,

2016 and thereafter, fix a personal hearing. Notwithstanding the aforesaid request respondent no.2 confirmed the show cause notice by order dated 13th July, 2018 without waiting for the petitioner's reply or even hearing the petitioner. Thus, it is prayed that this Court should in exercise of its extra ordinary jurisdiction entertain the petition.

4 On the other hand, Mr. Jetly, the learned Counsel appearing for respondent, submits that there is an alternative remedy available under the Act. Thus the petitioners should approach the Appellate Authority under the Act, if they are aggrieved by the impugned order dated 13th July, 2018 passed by the Commissioner of Customs. It is further submitted that the conduct of the petitioner in not approaching the Commissioner of Customs and obtaining soft copies of Annexures 'A' and 'B' to the notice itself demonstrates that the conduct was only to somehow delay the proceedings. The fact that the time was given for personal hearing on three occasions but the petitioner chose not to remain present on all three occasions, is further evidence of non-cooperation by the petitioner. Therefore, it is submitted that this Court should not

exercise its extraordinary jurisdiction and entertain this petition.

5 We note the fact that the show cause notice dated 15th December, 2016 has called upon the petitioner to file its reply within a period of 30 days from the receipt of the notice. However, the show cause notice dated 15th December, 2015 as served upon the petitioner did not have annexures 'A' and 'B' annexed to it nor did they accompany the notice. It is not disputed that annexures 'A' and 'B' were sent to the petitioner with the letter dated 30th May, 2018 and same was received by the petitioner only on 4th June, 2018.

6 The show cause notice dated 15th December, 2016, itself, gave the petitioner thirty(30) days time to respond to the notice. In the aforesaid circumstances, it is only after a complete notice is served upon the petitioner that the period of 30 days to file a reply to the notice would commence. In this case, the complete notice was undisputedly received by the petitioner only on 4th June, 2018 when annexures 'A' and 'B' were served upon the petitioner. The fact that the petitioner had not personally approached the revenue for soft copies of annexures 'A' and 'B' to the show cause notice would not in any way detract from the obligation of the Commissioner to serve

the complete notice upon the petitioner so as to enable the petitioner to file its reply within 30 days from the receipt of the notice. In the facts of the case, the petitioner had on 26th June, 2018 requested the Commissioner to grant further time of four weeks to file reply to the show cause notice. The Commissioner after recording the aforesaid facts did not adjourn the hearing and proceeded to decide the issue ex-parte. The Commissioner could have granted time of four weeks from 4th June, 2018 and given the petitioner time to file the reply upto 4th July, 2018 and thereafter given opportunity of personal hearing to the petitioner.

7 The objective of giving show cause notice is not an empty formality. The objective is to make the party aware of the case it has to meet. Thus time is given to respond to the same. The reduction of time as given in the notice, certainly causes prejudice to the party. The conduct of the petitioner in not attending the personal hearing would not absolve the Revenue from giving time of thirty days as stated in the notice, on serving the complete show cause notice on the parties. In these circumstances, there has been failure of principles of natural justice inasmuch as the petitioner has not been

given sufficient opportunity to meet the show cause notice. In these circumstances, directing the parties to avail of alternative remedy would be unfair as original proceeding is itself in breach of natural justice.

8 In these circumstances, the impugned order dated 13th July, 2018 is quashed and set aside. The show cause notice dated 15th December, 2016 is restored to the file of Commissioner of Customs, respondent no.2, for fresh disposal in accordance with law. Mr. Prakash Shah, the learned Counsel appearing for the petitioners states that they would file a reply within a period of two weeks from today. Thereafter the Commissioner of Customs would give a personal hearing to the petitioner in respect of to show cause notice dated 15th December, 2016 and pass an order in accordance with law.

9 Petition disposed of in above terms.

(S.C. GUPTE, J.)

(M.S.SANKLECHA, J.)