
(2021) 04 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51112 Of 2020

Baldeep Singh

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Customs Act, 1962 — Section 153, 153(1)

Citation : (2021) 04 CESTAT CK 0007

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Akhil Krishan Maggu, Pradeep Gupta

Final Decision : Allowed

Judgement

1. The issue in this appeal is whether the show cause notice was validly served on the appellant which is a condition precedent for giving jurisdiction to the Adjudicating Authority to pass an order.

2. The case of the appellant is that he is neither an importer nor engaged in the business of import and export. Further, he does not have any Import Export Code (IEC). Brief facts of the case are that Revenue seized post parcels bearing Nos.

(i) EMS No. EA122469270 CN;

(ii) EA122469411 CN; and

(iii) EA 122469345 CN

imported from China not bearing the name of consignor, at foreign post office, New Delhi. The parcels were addressed to Shri Baldeep Singh, D-164, Punjabi Basti, Baljeet Nagar, New Delhi - 110008. The parcels were examined by the officers of DRI under panchnama. The goods were declared as CD and/or module whereas the goods were actually found as follows:-

Sr. No. (1)

Date of examination

Speed post parcel No.

Description of goods found (3)

Quantity found (4)

1

21.01.2016

EA122469270 CN

SFP Transceiver Module (Fibre Optic LC Connector)

1095

EA122469345 CN

Window Server 2012 Standard

7

Microsoft Corporation, Win Pro 8.1 x 64 Eng Inti pk DSP OEL DVD

218

2

27.01.2016

EA122469345 CN

SFP Transceiver Module (Fibre Optic LC Connector)

520

As the goods were liable for confiscation, the same were seized. Summons were issued in the name of the appellant dated 11.02.2016, 02.03.2016 and 15.03.2016. Thereafter, nobody appears before the DRI. An officer personally visited the premises at D-164, Punjabi Basti, Baljeet Nagar, New Delhi-110008, but the person - Shri Baljeet Singh was not found. Thereafter, without ascertaining or identifying the main person - Shri Baljeet Singh, show cause notice dated 20.07.2016 was issued by speed post and also marked to notice board of DRI, DZU, Lodhi Road, New Delhi-110003 and copy also marked to the notice board of Assistant Commissioner of Customs, FPO, Indraprastha Extension, New Delhi.

3. The case of the appellant is that the aforementioned show cause notice nor any communication like summons or notice, nothing was served on him. Thus, the ex-parte order-in-original No. RD/ADC/AC/92 /2017 dated 06.12.2017 is wholly without jurisdiction and a nullity. The case of the appellant is, neither he is the importer nor have claimed the goods seized by the Revenue. Further, there is

no record that the appellant have been indulging in any such import(s) amounting to smuggling.

4. The first appeal filed by the appellant before the Commissioner (Appeals) was rejected. Being aggrieved, the appellant is before this Tribunal.

5. During the course of hearing, this Tribunal noticed that there appears to be no proper service of show cause notice, and accordingly by Miscellaneous Order dated 18.01.2021 directed the learned Authorised Representatives to file a copy of show cause notice as well as proof of service of show cause notice, in view of the fact that the appellant have denied the service of show cause notice. In reply thereto, learned Authorised Representative on 04.03.2021 have only furnished the number of speed post and date of despatch, but have failed to submit the proof of delivery. He also filed the copy of show cause notice and the copy of notice of personal hearing issued on 19.06.2012, but there is no proof of service.

6. Learned Authorised Representative for the Revenue submitted the copy of report from the foreign post office, New Delhi wherein he stated that there is no record of regular imports by this appellant and a similar report dated 10.02.2021 have been received from the Deputy Commissioner (EDI), ACC Export. Ld. AR further submitted that the address given by the appellant in the memo of appeal is same on which the show cause notice etc. was issued through speed post, and accordingly states that there is sufficient service of show cause notice.

7. Learned Counsel for the appellant reiterates his submission and states that Revenue have resorted to colourable exercise of power, as it has passed the ex-parte order-in-original without ensuring service of show cause notice. In-spice of there being no change of address of the appellant, which has been all throughout for the last several years till today at D-164, Punjabi Basti, Baljeet Nagar, New Delhi-110008. Even as per the statement of Revenue they could locate the appellant even on personal visit to the said premises. Further, without identifying and ascertaining the service of notice, by putting on the notice board is colourable exercise of powers, having no legal sanctity. Accordingly, he prays for allowing the appeal with consequential benefits.

8. Having considered the rival contentions, I find that Section 153 of the Customs Act requires summons, notice, orders etc. may be served:-

"(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c)

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved".

9. In the present case in spite of opportunity given, Revenue failed to produce the proof of delivery of the show cause notice. Further, from perusal of the order-in-original, I find that the Adjudicating Authority have not recorded satisfaction of service of show cause notice and have proceeded to pass the ex-parte order-in-original, which is held to be a nullity in the eyes of law. Substituted service by way of affixation on the notice board of the Department is by way of last resort. In the facts of the present case, I find that without identifying, the noticee, nor taking any reasonable measures of any substituted service as mentioned in clause (d) and (e) of Section 153(1), the Adjudicating Authority have proceeded to pass the ex-parte adjudication order. For passing a valid adjudication order, valid service of show cause notice is essential.

10. Accordingly, I hold that there is no valid service of show cause notice. Thus, the order-in-original is held without authority of law. Therefore, the impugned order is set aside and appeal is allowed with consequential benefits, in accordance with law.

(Pronounced on 07.04.2021).