THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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W.P.NO.18823 OF 2015

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O R D E R (Per GC,J)

Heard the counsel for the petitioner and the Standing Counsel for the Central Board of Customs and Excise.

2. The claim of the petitioner firm is that it is involved in import and export of minerals and in its regular course of business has imported steam coal under different bills during the years 2012 and 2013 from Indonesia to Krishnapatnam port, India, which is classified under sub heading 27011920 of the Customs Tariff Act, 1975, availing the benefit under the Customs Notification Bo.12 of 2012 and paid the required duty. The office of the 3rd respondent – Deputy Commissioner of Customs had issued detention memo dated 24.3.2013 under Section 110 of the Customs Act, 1962 (for short 'the Act') for the bills dated 11.10.2012 and 30.10.2012. Under protest, the petitioner paid the differential duty amount for the bill dated 11.10.2012. Subsequently, the petitioner was served with a show cause notice dated 18.9.2013. Alleging that the show cause notice was served without annexures, the petitioners filed reply. The 1st respondent – Commissioner of Customs sought the petitioner to file a detailed reply with regard to all the five bills of entries mentioned in the show cause notice and the claim of the petitioner that it filed the reply dated 15.10.2013 and the personal hearing was given on 7.1.2014 and as no representation could be made on behalf of the petitioner on the said date, adjournment letters were sent on 6.1.2014 and 4.2.2014. The case of the petitioner is that subsequent to 4.2.2014 there was no communication from the respondent - department and on 25.8.2014, the petitioner submitted a change of address for future communication and at that time, the petitioner came to know that the impugned order dated 27.3.2014 has already been passed. The grievance of the petitioner is that without giving prior notice or personal hearing, the impugned order was passed. The further grievance of the petitioner is that though in the impugned order it is stated that an

opportunity was given on 7.3.2014, there is no communication and the impugned order was passed in violation of the principles of natural justice. Hence the writ petition.

3. The main contention of the learned counsel for the petitioner is that the impugned order was passed in violation of the principles of natural justice. Section 153 of the Act provides the procedure for service of summons or notice. The said provision is extracted as under for ready reference:

> **153. Service of order, decision, etc.** - Any order or decision passed or any summons or notice issued under this Act, shall be served, -
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> a. by tendering the order, decision, summons of notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs;
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> b. if the order, decision, summons of notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

From a reading of the above clause (a) of Section 153 it is clear that summons or notice under the Act shall be served by registered post or by such courier as may be approved by the Commissioner of customs and under clause (b) if the summons cannot be served in the manner provided in clause (a) by affixing it on the notice board of the customs house. In the present case, the main grievance of the petitioner is that the impugned order was passed without affording an opportunity of personal hearing. Either in the impugned order or in the counter affidavit, there is no specific mention that the procedure contemplated under Section 153 of the Act for sending the summons or notice by way of registered post, has been complied with before passing the impugned order. In these circumstances, it has to be taken that the impugned order is passed in violation of principles of natural justice.

4. Without going into the merits of the case, the impugned order dated 27.3.2014 is set aside on the ground of violation of principles of natural justice and the matter is remitted

back to the 2nd respondent – Commissioner to pass orders afresh.

5. The petitioner is directed to appear before the 2nd respondent - Commissioner on 15.10.2015 at 12-00 hours with all the required documents and the authority after affording the petitioner an opportunity of bearing heard, shall pass orders in accordance with law.

6. The writ petition is accordingly allowed. No costs.

7. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAM,J

DATE:28.09.2015

AVS