

Gurbax Singh  
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No. 12788 of 2017  
Date of decision: 28.8.2017**

**M/s Om Udyog, E-403, Phase VI Focal Point, Ludhiana through its  
Proprietor Sh. Jeevan Jain**

**.....Petitioner**

**Vs.**

**Union of India and another**

**.....Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Saurabh Kapoor, Advocate for the petitioner.  
Mr. Sourabh Goel, Senior Panel Counsel for the respondents.  
Mr. Ishpuneet Singh, Senior Panel Counsel for the  
respondents (in CWP No. 10555 of 2017)

**Ajay Kumar Mittal,J.**

1. This order shall dispose of a bunch of 24 petitions i.e. CWP No. 12788, 10555, 12879 to 12895, 13205 and 13207 to 13210 of 2017 as learned counsel for the parties are agreed that the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No. 12788 of 2017.

2. In Civil Writ Petition No. 12788 of 2017, the petitioner prays for quashing the order dated 28.02.2017, Annexure P.1, rejecting the declared classification and valuation of the goods and reassessing the same, without following the procedure prescribed under the Customs Act,

1962 (in short, “the Act”) and against the principles of natural justice, being illegal, arbitrary, malafide and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.12788 of 2017 may be noticed. The petitioner is a proprietorship firm of Sh. Jeewan Jain. It is carrying on its business activities in Punjab. It is engaged in the import and trading of Plain Plastic Film falling under chapter heading 3920 of Custom Tariff Act, 1975. The said goods are freely importable as per Indian Tariff Code (ITC) HS. During the course of business, the petitioner purchased four consignments of Plain Plastic Film odd stock lot of mixed sizes from M/s Red Falcon Building Material, vide invoice dated 17.10.2014. On the basis of the above import documents, the petitioner made a request for opening of the bill of entry under Section 46 of the Act before the respondents which was granted on 16.12.2015. Bill of entry dated 8.12.2014 was issued for clearance of impugned goods. The petitioner accordingly declared the value and description as per invoice supplied by the overseas supplier. At the time of filling of the bill of entry, the petitioner had declared the Customs Duty in terms of the duty calculated as per the Tariff. During the course of assessment of the bill of entry, a query was raised by the appraisement staff in respect of under valuation of the goods which was replied to by the petitioner and it was requested that the doubts of the under valuation of goods may be communicated to it in writing. The bill of entry was thereafter processed provisionally under Section 18 of the Act and the Customs Duty as chargeable was paid under protest by the petitioner. Despite the fact that the goods imported by the petitioner were Plain Plastic Film old stock lot of different sizes,

respondent No.2 chose not to adjudicate the matter. The petitioner vide letters dated 19.01.2015 and 18.03.2015 raised a protest on the enhanced duty and requested that upon finalization of the bill of entry, a show cause notice may be issued to it. The petitioner was never served any show cause notice as to why the assessment should not be finalized. Further the respondents never chose to issue any notice under Section 28 of the Act or to afford an opportunity of personal hearing for adjudication of the case. To the utter surprise of the petitioner, respondent No.2, finally adjudicated the case, rejecting the declaration made by the petitioner. According to the petitioner, since it had filed the bill of entry, the aforesaid goods, as per the facts and circumstances and the procedure prescribed were to be assessed either under Section 17 or 18 of the Act. Where the bills of entries were to be assessed finally, a show cause notice and an opportunity of personal hearing under Section 122A of the Act was required to be given. Hence, the instant petition by the petitioner.

4. A written statement has been filed in CWP No.12884 of 2017 only. The said written statement has been adopted in all the connected petitions except CWP No.10555 of 2017. It has been inter alia stated in the written statement that the present petition is not maintainable as alternative efficacious remedies are available to the petitioner under the provisions of the Act. The petitioner itself in its letters dated 25.12.2014, 26.12.2014 and 15.07.2015 had requested for passing of a speaking order under Section 17(5) of the Act to file an appeal before Commissioner (Appeals) under Section 128 of the Act. It has been further stated that the classification had not been changed/rejected and, thus, there was no requirement of issuance of show cause notice/personal hearing for the same. As regards custom duty, the transaction value was duly rejected by

issuance of notice through the Electronic Data Interface System. On these premises, prayer for dismissal of the petitions has been made.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner referred to Section 122A of the Act to urge that the adjudicating authority is mandated there under to give an opportunity of being heard to a party in any proceeding under this chapter or any other provision of the Act if the party so desires.

7. Section 122A of the Act reads thus:-

“122A: **Adjudication Procedure:** (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.”

8. A perusal of the above provision shows that an opportunity of hearing to a party in a proceeding is required to be given before passing the order. If sufficient cause is shown at any stage of the proceeding, the adjudicating authority may grant more time to the party for reasons to be recorded in writing. A proviso has also been inserted that adjournment shall not be granted more than three times to a party during the proceeding.

9. Admittedly, in the present case, the petitioner had purchased the above mentioned goods from M/s Red Falcon Building Material at Container Freight Station, Dhandarikalan, Ludhiana which were cleared provisionally. Further, the assessment had been finalized against the petitioner, without affording an opportunity of personal hearing and issuance of show cause notice under Section 28 of the Act. The petitioner vide letters dated 19.01.2015 and 18.03.2015 raised a protest on the enhanced duty and requested that upon finalization of the bill of entry a show cause notice may be issued to it. Respondent No.2 did not adjudicate the matter for a long time. No opportunity of hearing was given to the petitioner. On 28.2.2017, the impugned order was passed rejecting the declared classification and valuation of goods and reassessing the same.

10. After perusing the averments made in the petitions and hearing learned counsel for the parties, we find that neither any show cause notice under the provisions of the Act was issued nor any opportunity of hearing was given to the petitioner before passing the impugned order, resulting in violation of principles of natural justice. Identical issue has been decided by this Court in ***R.V. General Trading Vs. Union of India***, 2016 (341) E.L.T. 220, wherein in the absence of affording an appropriate opportunity of hearing, the impugned order was set aside and the matter was remitted back to the competent authority for fresh consideration.

11. In view of the above, the action of the respondents in not providing an opportunity of hearing or issuance of any show cause notice to the petitioner before passing the impugned order cannot be held to be justified. Accordingly, the impugned orders in all the petitions are set

aside and the matters are remanded to the competent authority for passing fresh order after hearing learned counsel for the parties in accordance with law. Needless to say anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy. The writ petitions stand disposed of accordingly.

**(Ajay Kumar Mittal)**  
**Judge**

**August 28, 2017**  
**‘gs’**  
Whether speaking/reasoned  
Whether reportable

**(Amit Rawal)**  
**Judge**  
**Yes**  
**Yes**