

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

**CWP No. 9285 of 2017
Date of decision: 10.10.2017**

**M/s H K Enterprises, SCF 77, Phase-9, SAS Nagar, Mohali through
its Proprietor Sh. Harinderjit Singh.**

.....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. Rohit Jindal, Advocate for Mr. Saurabh Kapoor,
Advocate for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel for
respondent Nos. 1 and 2

Ajay Kumar Mittal,J.

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for quashing the order dated 15.02.2017, Annexure P.1, rejecting the declared classification and violation of the goods and re-assessing 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.

2. A few facts relevant for the decision of the controversy involved as narrated in petition may be noticed. The petitioner is a

proprietorship firm of Sh. Harinderjit Singh. It is carrying on its business activities in Punjab. It is engaged in the import and trading of Heavy Melting Scrap falling under chapter heading 7204 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 Heavy Melting Scrap from M/s Sanex International PTE Ltd. & Sunagro PTE Ltd., Singapore, vide invoices dated 31.07.2012, 03.10.2012 and 08.10.2012. 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 16.10.2012 and 17.11.2012. Bills of entry dated 16.10.2012 and 17.11.2012 were issued for clearance of the 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 examination of the goods by the Officers of Customs the same had been de-stuffed 100 per cent and the same were found to be as per the description and quantity declared in the invoice. The samples of the aforesaid goods were never obtained by the Officers of Customs at the time of examination nor the same were sent to some laboratory for the purpose of testing or examination. The All India Re-Rollers Association, Mandi Gobindgarh represented to the Commissioner of Customs explaining them that the used Railway Lines were not to be used anywhere in the country except for the fact that they were used for the purpose of smelting the said goods which may be classified as scrap and not under any other Chapter Heading. The Bills of entries were thereafter processed provisionally under Section 18 of the Act. The petitioner was

directed to furnish Bond and Bank Guarantee for the purpose of release of the goods, which was deposited and the goods of the petitioner were released thereafter. Despite the fact that the goods imported by the petitioner were Heavy Melting Scrap, respondent No.2 chose not to adjudicate the matter for years. On 13.01.2016, a letter was issued to the petitioner to show cause as to why the description of the goods may not be changed for the purpose of finalisation of the assessment. The petitioner through its counsel vide letter dated 15.01.2016 objected to the stand of respondent No.2 and made interim reply, rebutting the stand of the respondent. In addition, the petitioner also requested that respondent may issue show cause notice before adjudication of the case. The petitioner was again served with the letter dated 03.02.2016, directing it to show cause as to why the assessment should not be finalized. However, the respondent never chose to issue any notice under Section 28 of the Act to the petitioner or afford an opportunity of personal hearing to it for adjudication of the case. Vide letter dated 15.02.2016, the petitioner again requested respondent No.2 to permit inspection of the original file, verification of invoices issued by it after sale of the goods and also afford an opportunity of personal hearing before 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 under Section 17 and 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.

3. A written statement has been filed on behalf of respondent Nos.1 and 2 wherein it has been inter alia stated that the present petition is not maintainable as alternative efficacious remedy is available to the petitioner under the provisions of the Act. The Commissioner of Customs, Amritsar vide classification dated 15.01.2013, settled the issue of classification and importability under the Foreign Trade Policy holding that the goods were freely importable and classifiable in Tariff Heading 7302 of the Customs Tariff Act, 1975. Since in the present case, assessment made was provisional, the petitioner vide letter dated 13.01.2016, was put on notice regarding the classification of the impugned goods. Vide letter dated 15.01.2016, the petitioner raised the objection on the proposed classification by submitting its detailed representation which was duly considered and the impugned bills of entries were finalized by issuance of an order in original. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. 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.

6. 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.”

7. 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.

8. Admittedly, in the present case, the petitioner had purchased the above mentioned goods from M/s Sanex International PTE Ltd. & Sunagro PTE., Singapore at Container Freight Station, Dhandari Kalan, Ludhiana, which were cleared provisionally. However, the assessment had been finalised against the petitioner, without affording an opportunity of personal hearing and issuance of show cause notice under Section 28 of the Act. The petitioner requested respondent No.2 to permit inspection of the original file, verification of invoices issued by it after sale of the goods and afford an opportunity of personal hearing before adjudication of the case. Respondent No.2 without adhering to the submissions made by the petitioner vide letter dated 15.02.2016 rejected the declaration made by it. No opportunity of hearing was given to the petitioner.

9. After perusing the averments made in the petition 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.

10. 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 dated 15.02.2017, Annexure P.1, is set aside and the matter is 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 petition stands allowed.

(Ajay Kumar Mittal)
Judge

October 10, 2017
‘gs’

(Amit Rawal)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes