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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5347/2017**

MANVI EXIM PVT. LTD.

..... Petitioner

Through: Mr. Prem Ranjan Kumar, Advocate.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS,
(PREVENTIVE)

..... Respondent

Through: Mr. Sanjeev Narula, Sr. Standing
Counsel for Customs with
Mr. Abhishek Ghai, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
27.07.2017

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1. The short point urged in this writ petition challenging the Adjudication Order dated 29th May, 2017 passed by the Chief Commissioner, Customs (Preventive) is that the Show Cause Notice ('SCN') dated 12th August, 2016 was not received by the Petitioner.

2. On 21st June, 2017, this Court while directing notice to be issued in the present petition passed the following order:

"The petitioner impugns Order-in-Original dated 29.05.2017. Learned counsel for the petitioner concedes that the said order is an appealable order. However, he submits that prior to the receipt of the order, no show cause notice was received or opportunity of hearing was granted to

the petitioner. He submits that the principle of natural justice has not been complied with.

Since the contention of the petitioner is that no show cause notice was received or opportunity of personal hearing was granted to the petitioner, issue notice to the respondents.

Notice is accepted by the learned counsel appearing for the respondents, who prays for time to produce the record of issuance and service of the show cause notice as well as notice for personal hearing.

At request, renotify on 27.07.2017.”

3. Mr. Sanjeev Narula, learned Senior Standing Counsel for the Customs Department ('Department'), has produced before the Court the documents relevant to the above issue available in the file of the Department. It shows that SCN dated 12th August, 2016 was dispatched by ordinary post. There is no proof in the file of the Petitioner having received the said SCN. Strangely, the Petitioner's address has continued to remain the same, viz., No. 4, Malik Market, Near Shiv Mandir, Saroorpur Indl. Area, Tehsil Ballabgarh, Faridabad, Haryana-121001. However, the Petitioner maintains that till date he has not received the SCN.

4. There were three notices of hearing sent to the Petitioner while the adjudication process was on. These notices dated 2nd February, 20th March and 20th April, 2017 appeared to have been sent by the Department by speed post to the above address. While the Department, in its file, has the

postal receipts for dispatch of these notices by speed post, there is no tracking report showing whether, in fact, they were delivered to the Petitioner. Section 153 (a) of the Customs Act, 1962 ('Act') mandates the service of a notice, including an SCN, "by registered post or by such courier as may be approved by the Commissioner of Customs". In the present case, the SCN was dispatched by ordinary post and not by the registered post. Consequently, the Department is unable to satisfy the Court that in compliance with Section 153(a) of the Act, it has, in fact, served the SCN in question on the Petitioner. Consequently, the benefit of doubt in this regard must go to the Petitioner.

5. For the above reasons, the impugned adjudication order dated 29th May, 2017 passed by the Respondent is set aside.

6. The matter is restored to the file of the Principal Commissioner of Customs (Preventive), New Customs House, New Delhi, for a fresh hearing of the Petitioner and passage of a fresh adjudication order on merits without reference to the orders that has been set aside by this Court. The Petitioner will appear before the above adjudicating authority on 25th September, 2017.

7. In the meanwhile, a complete copy of the SCN, together with all the relied upon documents, will be delivered to the Petitioner by the Department not later than one week from today. The Petitioner's reply to the SCN will be filed on or before 11th September, 2017. Any inspection that the Petitioner may request of the documents available with the Department should be granted and completed definitely prior to 25th September, 2017. The

Petitioner will not seek any unnecessary adjournments. Subject to the above, the adjudicating authority will endeavour to complete the hearing and pass the adjudication order afresh, not later than three months after 25th September, 2017.

8. The petition is disposed of in the above terms.

9. Order *dasti* to the parties.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 27, 2017
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