IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.2999 of 2011
MP.Nos.2 and 3 of 2011

M/s.Rasi Offset Printers, represented by its Proprietor K.Narendra
Madurai 625 001 ... Petitioner

Vs

1.The Commissioner of Customs (Seaport-Import), Custom House, Chennai-1

2.The Joint Commissioner of Customs, Group 5B and 5C Custom House, Chennai-1

3.The Commissioner of Customs (Appeals),Custom House, Chennai-1

4.The Deputy Commissioner of Customs, Appraising Group 5A, Seaport Custom House, Chennai-1 ... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the 4th Respondent herein, The Deputy Commissioner of Customs, Appraising Group 5A seaport, Chennai dated 25.01.2011 in File No.S59/250/2005-Gr.5B and to quash the same.

For Petitioner : Mr.A.K.Jayaraj
For Respondent : Mr.S.R.Sundar for RR1 to 4

ORDER

The prayer in this Writ Petition is to quash the detention notice of the 4th Respondent, dated 25.01.2011, in and by which, any goods belonging to the Petitioner were ordered to be detained and sold and also the penalty and fine amount were ordered to be deducted from the sale proceeds thereof.

2. This Court heard the learned counsel for the Petitioner and the learned standing counsel for the Respondents

and also perused the materials placed on record.

3. The case of the Petitioner is that the Petitioner had imported 50 pieces of old and used photocopiers and filed a Bill of Entry No.934458, dated 26.12.2005 for clearance. The 2nd Respondent had passed an order, imposing a redemption fine of Rs.1,14,000/- and penalty of Rs.22,000/- under Section 112(a) of the Customs Act and on such payment, the goods were released. Thereafter, aggrieved by the said order, the Respondent / Department, had preferred an appeal before the 3rd Respondent and the said appeal was allowed. After the denovo order of the 3rd Respondent, no notice was served on the Petitioner and thereafter, the impugned detention notice, dated 25.01.2011 came to be issued by the 4th Respondent on the ground that the Petitioner had failed to pay a sum of Rs.2,63,000/- towards fine and penalty, confirmed under Order-inOriginal No.7575/2008, dated 27.03.2008. The Petitioner has not received the said Order-in-Original, dated 27.3.2008, till the impugned detention notice was passed.

4. According to the learned counsel for the Petitioner, the impugned detention notice was issued, without serving a copy of the Order-in-Original No.7575/2008, dated, 27.03.2008, thereby violating the principles of natural justice and hence, the impugned detention notice is liable to be quashed.

5. The learned standing counsel for the Respondents would submit that the case was originally adjudicated, by the 1st Respondent, Commissioner (Imports), by order dated 30.12.2005, by imposing a fine of Rs.1,14,000/- and a penalty of Rs.22,000/- under Sections 111(d) and 112(a) of the Customs Act and thereafter, upon review of the said order, it was noticed that the fine and penalty imposed by the Original Authority was not incommensurate with the offence committed and therefore, by order dated, 06.11.2006, the Commissioner (Imports) had directed to file an appeal before the Commissioner (Appeals) and accordingly, an appeal was filed before the Original Authority. The Original Authority had passed a Denovo Order, vide, OINO 7575/2008, dated 27.03.2008 under Section 125 of the Customs Act, granting an option to redeem on payment of fine of Rs.2,85,000/- and penalty of Rs.1,14,000/- under Section 112(a) of the Customs Act and stating that after adjusting the fine and penalty as per the order dated 30.12.2005, the remaining amount of Rs.1,71,000/- towards fine and Rs.92,000/- towards penalty are to be recovered.

6. It is also brought to the notice of this Court by the learned standing counsel for the Respondents that the Petitioner did not appear before the Appellate Authority for the personal hearings on 17.12.2007, 20.12.2007 and 24.12.2007 and also failed to appear for the personal hearings before the Original Authority. Therefore, the Original Order was passed on 27.03.2008 and the said Original Order was communicated to the Petitioner by speed post, which was returned undelivered, with

an endorsement 'left' on 17.04.2008 and therefore, the impugned detention notice was issued to the Petitioner on 25.01.2011 and the same was received. But, however, without challenging the said Original Order dated, 27.03.2008, the Petitioner has challenged only the order dated, 25.01.2011. The Respondent Department had issued the impugned detention notice to recover the dues from the Petitioner in exercise of the power conferred under the provisions of the Customs Act and hence, this Writ Petition deserves no consideration by this Court.

7. The learned standing counsel for the Respondents has relied on the decisions reported in 2000 (126) ELT 65 Mad (P.Bhoormal Tirupati Vs. Additional Collector of Customs), wherein in paragraph 3, it was held as under:-

> "3. The only point that arises is whether the service by the registered post effected on 13.5.1969, which was returned with the endorsement 'left', is sufficient notice. Section 153 of the Act states that any order or decision passed or any summons or notice issued under the Customs Act, shall be served (a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; sub section (b) of Section 153 need not be referred to as it does not arise in this case. A notice had been sent by registered post duly addressed to the Appellant. The section requires that notice shall be served by sending it by registered post to the person for whom it is intended. The section does not require that effective service should be effected by the Appellant receiving it. This position is made clear by reference to Section 27 of the General Clauses Act which states that where any Central Act, requires any document to be served by post, then, unless a different intention appeals, the service shall be deemed to be effected by properly addressing prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed, pre-paid and posted by registered post is not under dispute. No other attempt has been made to prove the contrary. The endorsement 'left' is not sufficient to prove the contrary. Apart fro it, a reading of the section indicates that the proof to the contrary can only be limited to proving that the service had not been effected at the time at which the letter would be delivered in the ordinary course

of post. We find no difficulty in coming to the conclusion that there has been proper service notice. The Writ Petition was rightly dismissed. This appeal fails and it is dismissed."

8. Reliance was also placed on the decision of this Court reported in 2013 (291) ELT 27 Mad (ETA General Pvt. Limited Vs. Commissioner of Customs, Chennai) wherein in paragraph 12, it was held thus:-

"12. In such view of the matter, the Department is bound to send notice only to the address as per the record and they are not entitled to change the address. The Department cannot unilaterally change the address unless there is a specific request from the party that their address has been changed. Therefore, service on the address shown as per the record is a service of the order in terms of Section 153 of the Customs Act. No other method is permissible. The Department has shown by the original file to show despatch on 8.3.2012 by speed post acknowledgement due. Therefore, the service is in order. This Court is not inclined to accept the plea of the Petitioner that there was no proper service."

9. The main argument advanced by the learned counsel for the Petitioner is that the Original-In-Order No.7575/2008, dated 27.03.2008 was not served on the Petitioner before passing the impugned detention notice. It has been specifically stated in the counter affidavit that through a letter dated, 09.04.2007, The Respondents had informed the Petitioner about the said order. Since no reply was received from the Petitioner, personal hearings were given on 17.2.2007, 20.12.2007 and 24.12.2007, by letter dated, 12.12.2007. However, the Petitioner did not appear for the personal hearing on the said dates. Thereafter, the Original-in-Order, dated 27.03.2008 was passed. The said order sent by the Respondent Department to the Petitioner was returned undelivered, with an endorsement 'left' on 17.04.2008 and consequently, the impugned detention notice came to be passed, in terms of the provisions of the Act. The Petitioner failed to receive the postal communication to evade the payment of dues. Further, there is no bona fide reason stated by the Petitioner in the affidavit for refusal of receipt of the said Original-in-Order, dated 27.03.2008.

10. In fine, considering the aforesaid facts and circumstances of the case and the decision cited supra, the contention of the learned counsel for the Petitioner that there was no proper service of notice before passing the impugned detention notice, cannot be accepted. As such, this Writ Petition, without challenging the said Order-in-Original, cannot be entertained. Further, this Court finds no infirmity or illegality in the impugned detention notice, which warrants

interference by this Court and accordingly, this Writ Petition is liable to be dismissed.

11. Considering the facts and circumstances of the case and the decision cited supra, this Writ Petition deserves to be dismissed and consequently, this Writ Petition stands dismissed. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Srcm

To

1.The Commissioner of Customs (Seaport-Import), Custom House, Chennai-1

2.The Joint Commissioner of Customs, Group 5B and 5C, Custom House, Chennai-1

3.The Commissioner of Customs (Appeals), Custom House, Chennai-1

4.The Deputy Commissioner of Customs, Appraising Group 5A, Seaport
Custom House, Chennai-1

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.83062

WP.No.2999 of 2011

VBA(CO)
GN(07/01/2019)