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

Date of Pronouncement: 09.04.2018

**M/S ADITYA INDUSTRIES THROUGH ITS PROPRIETOR
MRS KUSUM GHILDIYAL** Petitioner

Through: Mr.Prem Kumar, Adv.
versus

**ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
& ANR** Respondents

Through: Mr.Anil Soni, CGSC with
Mr.Abhinav Tyagi, Adv. for R-1.
Mr.Satyakam, ASC with Mr.
Shaswat Parihar, Adv. for R-2 and
Mr.Dheeraj Kumar, Jr.Asstt. C/o
SDM, Sarita Vihar.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J (ORAL)

CM. APPL. 13602/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 3443/2018

2. The challenge in this petition is laid to the letter dated 23.11.2015, issued by respondent No.1 and final notice dated 25.01.2016 issued under Section 136 of the Delhi Land Reforms Act, 1954.

3. Learned Counsel for the petitioner submits that this is a case of mistaken identity as the recovery notice has been directed against M/s. Aditya Industries having its registered office at 605, Rohit House, Tolstoy Marg, New Delhi 110001, not against the petitioner which goes under the same name. I am told that the Petitioner is a proprietorship concern owned by, one, Mrs. Kusum Ghildiyal, having its registered office located at L-127 Pocket C, Sarita Vihar, New Delhi 110076.

4. In support of his contention, learned counsel for the petitioner draws my attention to the adjudication order dated 11.02.2011 which is appended at page 39 of the paper book. In particular, my attention is drawn to paragraph 3 where reference is made to the fact that the advance license dated 04.08.1993 in the sum of Rs.25,01,334/- was issued in favour of M/s Aditya Industries, located at 605, Rohit House, Tolstoy Marg, New Delhi 110001.

5. A perusal of the adjudication order would show that the advance licence was issued under the Duty Exemption Scheme. Apparently, the advance license was issued subject to the licensee exporting goods worth Rs.75,00,160/- in fulfilment of its obligation.

5.1 Since, the obligation, as required under the license was not fulfilled at all, a show cause notice was issued, which led to passing of the adjudication order, to which, I have made a reference above.

5.2 At the foot of the adjudication order, the following addresses of the notice are given:

“M/s. Aditya Industries, 605, Rohit House, 3-Tolstoy Marg, New Delhi 110001

M/s. Aditya Industries, L-127 Pocket C, DDA Flat, Sarita Vihar, New Delhi-110076

Smt. Kusum Ghildiyal, L-127, Pocket C, Vihar, New Delhi-110076”.

6. Apparently, based on the contents of the adjudicating order the impugned communication dated 23.11.2015 was issued by the Assistant Director General of Foreign Trade to the Chief Secretary, Government of NCTD. Resultantly, SDM, (Sarita Vihar) issued the impugned final notice dated 25.01.2016 for recovery of dues.

7. Learned counsel for the petitioner submits that the petitioner upon receipt of the final notice made a representation to the Asstt. Director General of Foreign Trade on 10.02.2016.

7.1 I am told that the said representation has not been disposed of.

8. As indicated above, the petitioner's stand is that it is a case of mistaken identity. Recovery which is sought to be made from the petitioner concern, according to the learned counsel, ought to be made from its namesake.

9. Issue notice. Mr. Soni accepts notice on behalf of respondent No.1. Mr. Satyakam, accepts notice on behalf of respondent No.2.

10. In view of the order that I propose to pass, counsels for the respondents submit that the respondents do wish to file a counter affidavit.

11. It appears, upon perusal of the record that the petitioner has something to say in the matter as regards the recovery which is sought to be against it. Petitioner as noticed above says its a case of mistaken identity. Since a representation has been made to respondent No.1 in that behalf, to which, I have made reference above, the said respondent is directed to grant a personal hearing to the petitioner and/ or its representative on 25.04.2018 at 11.00 am. Thereafter, respondent No.1 will pass a speaking order; a copy of which will be furnished to the petitioner. In case, the petitioner is still aggrieved, it will have an opportunity to assail the same in the manner known to law.

12. In case, the date indicated above does not suit respondent No.1, he will be at liberty to fix a fresh date which will be approximate, though, to the date fixed above.

13. It is made clear that during the pendency of the matter before respondent No.1, no coercive measures will be taken against the petitioner pursuant to the final impugned communication dated 23.11.2015 and final notice dated 25.1.2016. Furthermore, in case the order passed be respondent no. 1 is against the interest of the petitioner, it will not be given effect to for a period of two weeks of the service of the

order.

14. Petition is disposed of in the aforementioned.

15. Dasti to all the parties.

RAJIV SHAKDHER, J

APRIL 09, 2018

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