

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 6738 OF 2018

M/s. Sai Deepak Impex .. Petitioner.
v/s.
The Union of India
& Others .. Respondents.

Mr. Bharat Raichandani with Ms. Pragya Koolwal i/b. UBR Legal, for the
Petitioner.
Mr. Pradeep S. Jetly, for the Respondents.

**CORAM: M.S.SANKLECHA, &
M.S.SONAK, JJ.**

DATE : 14th JUNE, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges a Recovery Notices dated 29th December, 2016 and 18th April, 2018 issued by Respondent No.2 – Asst. Commissioner of Customs (Tax Recovery Cell) under Section 142 of the Customs Act, 1962 (the Act). The impugned communication seek to recover a sum of Rs.14.22 lakhs being the aggregate demand of duty along with interest payable in terms of following orders:-

- (i) 294(18)/2011-12 dated 19.11.2011
- (ii) 294(40)/2011-12 dated 19.11.2011
- (iii) 348(15)/2011-12 dated 30.12.2011
- (iv) 348(26)/2011-12 dated 30.12.2011; and
- (v) 393(1)/2011-12 dated 19.01.2012

2 Mr. Raichandani, learned Counsel in support of the Petition submits that Petitioner has not received copies of any of the orders in original to which reference is made in the Recovery Notice. It is further submitted that, neither the Petitioner received any show cause notice or a notice for personal hearing before the five orders referred to herein above, were passed under the Act. Thus, the impugned notices are clearly without jurisdiction as it is based on void orders.

3 Mr. Raichandani, further states that the Petitioner has repeatedly addressed communications to the Respondent, seeking copies of the five orders in original, referred herein above, and also proceedings leading to the same. However, same has not been forthcoming from the Respondent in spite of repeated requests. Thus, the Petition.

4 Mr. Jetly, learned Counsel appearing for the Petitioner tenders the five copies of the order in original which are listed out in the impugned communication dated 29th December, 2016. Same are taken on record and marked (colly.) 'A' for identification. On instructions, Mr. Jetly states that there is no evidence on record of service of the above orders upon the Petitioner. So also, he submits that there is no evidence of service of show cause notice or notice for personal hearing, leading the above orders on record.

5 We note that as the Recovery Notice proceeds on the basis of orders in original which have undisputedly been passed in breach of natural justice inasmuch as without being preceded by the show cause notice or notice for personal hearing being served upon the Petitioner. Thus, the impugned orders marked 'A' for identification are taken on

record and are quashed and set aside.

6 Mr. Jetly, learned Counsel appearing for the Respondent, on instructions states that the copy of the show cause notice would be served upon the Petitioner at the address shown in the cause title of the Petition and before as order is passed on the show cause notices, appropriate hearing would be granted to the Petitioner in respect of all the show cause notices involved in this Petition.

7 We accept the statement made on behalf of the Revenue.

8 As the basis of the impugned Recovery Notices dated 29th December, 2018 and 18th April, 2018 is set aside, the impugned notices are also quashed and set aside.

9 **Petition disposed of** in the above terms.

(M.S.SONAK,J.)

(M.S.SANKLECHA,J.)