IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.435 OF 2019

M/s. Technicom Systems (I) Pvt. Ltd. and Anr. ...Petitioners
vs.
The Deputy Commissioner of Customs and Ors. ...Respondents

Mr. Aseem Naphade a/w. Mr. A.H. Mehta and Ms. Ashwini Pawar I/b. Akshar Laws, for the Petitioners.
Mr. Vijay Kantharia a/w. Mr. Ram Ochani, for the Respondents

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

DATE : JUNE 26, 2019

P.C.:

. Heard learned counsel for the parties.

2. The challenge in this Petition is to the following:

(a) Notice dated 1st June, 2018 issued by the Dy. Commissioner of Customs requiring the Petitioners' to pay outstanding Government dues of Rs. 26,29,250/- towards the duty and penalty under the Customs Act, 1962 (said Act);

(b) The order in original dated 22nd December, 2005 made by Commissioner of Customs (Imports) ordering de-registration of the contract and confirming the enforcement of the Bond of Rs. 26,29,250/- executed in favour of Commissioner of Customs, Mumbai.

(c) Letter dated 5th February, 2019 addressed by the Asstt. Commissioner of Customs (Imports) to IDBI Bank ordering the debit freeze to the Petitioners' current account towards realization of the dues as aforesaid.

3. Mr. Aseem Naphade, the learned counsel for the Petitioners submits that the Petitioners were neither served with the show cause notice nor the order in original dated 22nd December, 2005 made by the Dy. Commissioner of Customs. He refers to Section 153 of the said Act to submit that any order of decision passed or any summons or notice issued under the said Act is required to be served by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Principal Commissioner of Customs or Commissioner of Customs. He submits that if the order cannot be served in the manner as indicated, then the same has to be served by affixing it on the notice board of the customs house. He submits that in the present case, there is no proof of service as contemplated by section 153 of the said Act. He submits that in the absence of any valid service of show cause notice, the Respondents had no right to make order in original dated 22nd

December, 2005. In any case, in the absence of service of order in original dated 22nd December, 2005 and offer of opportunity to the Petitioners to appeal against the same, the Respondents are not justified in seeking to enforce the demand.

4. Mr. Naphade submits that there is nothing in the order in original dated 22nd December, 2005 to indicate the adjudicating authority has recorded a satisfaction on the aspect of valid service. He submits that the record of such satisfaction in the order in original is mandatory and in the absence of such record, there is no question of establishing valid service by filing affidavits in this Court. He submits that the Respondents have not produced any proof of receipt of notice and in the absence of such proof the Petitioners' case that there was no valid service is required to be accepted. He relies on (i) ***Prince International vs. Union of India, 2015 (325) E.L.T. 495 (Bom.);*** *(ii)* ***Suresh Bafna vs. Commissioner of Customs & Central Excise and Ors., (2009) 234 ELT 606;*** *(iii)* ***Taranjeet Singh Mohan Singh Sawhney and Ors. vs. District Deputy Registrar Cooperative Socities and Ors., (2013) 10 Supreme Court Cases 402.***

5. Mr. Vijay Kantharia, learned counsel for the Respondents submits that the Petitioners have not been candid to this Court in as much as the records indicate that service has been validly effected at the registered address of the Petitioners. He submits that it was the duty of the Petitioners to have sent necessary intimation to the authorities in case there was any change of address and it is not for the Petitioners to take advantage of the unilateral change, if any in their addresses. In any case, Mr. Kantharia points out that the records in the matter are quite old and they suggest that notices were issued and sent to the Petitioners by registered A.D. He submits that in terms of Section 153 of the said Act sending notices by registered A.D. is good service. He submits that the Petitioners after furnishing a bond for clearance of the goods did not even bother to pursue the matter and in such circumstances the Petitioners cannot complain of denial of any reasonable opportunity. Mr. Kantharia submits that the Petitioners have made mis-statement in the Petition and there is suppression of facts. For all these reasons, Mr. Kantharia submits that the present Petition warrants dismissal.

6. The rival contentions now fall for determination.

7. The Petitioners had applied for registration of their contract under Project Import Regulations, 1986 for assessment of goods imported for manufacture of Telex Linker, Fax Linker, Float Charges and RF/IF coils for initial setting up of factory at MIDC, Satpur, Industrial Estate, Nashik on concessional rate of duty under CTH 9801 of Customs Tariff Act, 1975. The contract was registered and goods were assessed to duty provisionally under heading 9801 of Customs Tariff Act, 1975 on execution of Bond for Rs. 26,29,250/- and bank guarantee of Rs. 1,31,462/- subject to the Petitioners' fulfilling the terms and conditions as set out in the Project Import Regulations, 1986.

8. On 3rd November, 1997 the show cause notice was issued to the Petitioners on the basis that the Petitioners failed to submit re-conciliation statement in terms of Clause VII of the Project Import Regulations, 1986 within the prescribed period as also failed to produce the document0 proved regarding the valuation and quality of goods imported. The show cause notice required the Petitioners to explain as to why the provisional registration of the contract should not be finalized by de-registering the contract and accessing the imported goods on merits under appropriate Customs Tariff

classification without extending the benefit of concessional rate of duty under Customs Tariff Heading 9801.

9. The record indicates that the notices were issued to the Petitioners to attend personal hearing in furtherance of show cause notice from time to time. It is the case of the Petitioners that their factory was closed completely since on or about 2001 and some where in the year 2002 Indusind Bank had taken possession of the factory under the Securitization Act. The case of the Petitioners is that since the factory was closed, the record and documents are not traceable.

10. Mr. Debashis Benarjee, Assistant Commissioner of Customs has filed affidavit in reply on behalf of the Respondents. In the affidavit in reply, it is pointed out that the Petitioners had provided registered address of their factory at F-9, MIDC Industrial, Satpur, Nasik-7 and the office address as Jaywant Industrial, 62, Tardeo Road, Mumbai – 34. In the affidavit it is stated that several notices including the show cause notice dated 3rd November, 1997 were sent to the Petitioners on the aforesaid addresses provided by the Petitioners. Some documents have also been placed on record

which suggest that the notices were sent by R.P.A.D at the correct addresses of the Petitioners. One of the document suggests that even the order in original was sent to the Petitioners on the aforesaid address but was returned with the postal endorsement thereon as “left”. The envelope containing the order in original sent at the Tardeo address was also returned with the endorsement “not known”. All this according to us indicates that there was valid compliance with provision of section 153 of the said Act.

11. Since it is the case of the Petitioners that the Petitioners' factory premises were closed since 2001 or that factory premises were in possession of the bank between year 2002 to 2007, the minimum that was expected from the Petitioners was that they intimate this circumstance to the Respondents. This was necessary because the Petitioners were very much aware that only provisional assessment had taken place in respect of imported goods which were ultimately released under Bond and final assessment was yet to be completed. The registered address of the Petitioners continues to remain the same. No action was taken by the Petitioners to change this registered address in the records or to intimate the authority of the change, if any. In such

circumstances, the Petitioners cannot be heard to complain of non service, when there is material on record to suggest that notices as well as the order in original were indeed sent by RPAD to the address in the official records as well as address furnished by the Petitioners themselves.

12. The affidavit in reply filed by Mr. Debashis Benarjee, Assistant Commissioner of Customs sets out in detail the manner in which the service of notice as well as the order in original came to be effected upon the Petitioners. The Petitioners do not appear to have been quite candid in making the true and correct averments on the aspect of their address. The Petitioners have merely made some vague reference to the factory premises being closed form 2001 to 2007. The material on record does indicate that the Petitioners have themselves brought about this situation and therefore the Petitioners cannot now urge in alleged non compliance with the provisions of Section 153 of the said Act.

13. As noted earlier section 153 of the said Act provides that any order of decision passed or any summons or notice issued under the Customs Act, 1962 shall be served *inter alia* ....*"sending it*

by registered post........". There is material on record which indicates that the notice as well as the order in original was indeed sent to the Petitioners by registered post. To such situation, the presumption available under Section 27 of the General Clauses Act, 1897 will apply. The Petitioners have placed no material on record to rebut such presumption.

14. In ***Harihar Banerji and Ors. vs. Ramshashi Roy and Ors., AIR 1918 Privy Council 102*** it is held if a letter properly directed, is proved to have been put into the post office, it is presumed that the letter reached destination at the appropriate time according the regular course of business of the post office and received by the person to whom it was addressed.

15. In the precise context of the provision of section 153 of the said Act, the Division Bench of the Madras High Court in ***B. Bhoormal Tirupati vs. The Additional Collector of Customs AIR 1974 Madras 224*** has held that section 153 of the said Act only requires that the notice shall be served by sending it by registered post to the person for whom it is intended, it does not require that effective service should be effected upon the person

receiving it. Read with section 27 of the General Clauses Act, it becomes clear that when a document to be served is sent by registered post to the proper address with prepaid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Based upon all these, we are unable to accept the Petitioners' contention that there has been no proper service as contemplated under section 153 of the said Act.

16. The factual position in case of *Prince International* (supra) is quite at variance with the factual position in the present case. Therefore, relying upon stray sentence in paragraph 6, it is not open to the Petitioners to urge that there has been no valid service upon the Petitioners. The decision does not support the Petitioners' contention in regard to record of satisfaction on the aspect of valid service in the order itself. In any case, if the order in original is perused, there is reference to the service upon the Petitioners.

17. The decision in *Suresh Bafna* (supra) also turns on its own peculiar facts. The Petitioners in the said decision had in fact intimated the authorities about the shifting of the address and had

even communicated the new address. The Petitioners in the present case never intimated the Respondents about the closure of the factory or shifting of the address. Accordingly, the decision in *Suresh Bafna* (supra) can be of no assistance.

18. *Taranjeet Singh Sawhney* (supra) also turns on its own peculiar facts in as much as there was sufficient material on record in the said case to conclude that the Appellant was not given appropriate intimation about the preponement of date of hearing. The issue in the present case is quite different.

19. Accordingly, in the facts of the present case, we see no good ground to interfere with the order in original or in that matter the impugned notice/communication which flow from order in original in the exercise of our writ jurisdiction under Article 226 of the Constitution of India.

20. For all the aforesaid reasons, this Petition is dismissed.

21. There shall be no order as to costs.

(M.S. SONAK, J.) **(M. S. SANKLECHA, J.)**