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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 09th September, 2021

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W.P.(C) 9140/2021 & CM APPL. 28452/2021 (Stay)

M/S AGGARWAL LAMINATES PVT. LTD. Petitioner

Through Mr. Akhil Krishan Maggu, Advocate

versus

DEPUTY COMMISSIONER OF CUSTOMS (IMPORT),
INLAND CONTAINER DEPOT, TUGHLAKABAD, NEW DELHI

..... Respondent

Through Mr. Chetan Sharma, Additional
Solicitor General with Ms. K. Enatoli Sema and
Ms. Chubalemla Chang, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

1. Present writ petition has been preferred seeking the following reliefs:-

“i) Issue writ of certiorari quashing show cause notice dated 02.06.2021 ;

ii) direct the respondent to grant personal hearing to the petitioner in pre- show cause consultation dated 02.06.2021

iii) restrain the respondent from proceeding with the impugned show cause notice dated 02.06.2021, during the pendency of the present writ petition.

iv) pass such or similar order as deem fit in the peculiar facts and circumstances of the case.

It is further prayed the operation of impugned show cause notice may kindly be stayed during the pendency of present civil writ petition before this Hon'ble Court in the interest of justice."

2. Petitioner herein had imported goods declared as "Aluminium Based Copper Clad Laminates", *vide* Bills of Entry dated 08.05.2019 and 04.06.2019 and classified the goods under Customs Tariff Item 74102100 and paid basic custom duty @ 5%, SWS @ 10% on BCD and IGST @ 18%.
3. Respondent *vide* letter dated 24.05.2021 raised an objection that the goods were wrongly classified and on account of the misclassification, there was short payment of custom duty amounting to Rs. 3,07,010/-. A Pre-Notice Consultation letter dated 01.06.2021 was issued by the Respondent requiring the Petitioner to appear for the personal hearing on 02.06.2021. On failure of the Petitioner to appear on the said date, a Show-Cause Notice dated 02.06.2021 was issued to the Petitioner under Section 28(1) of the Customs Act, 1962 alleging misclassification of the goods in question and requiring the Petitioner to Show Cause within 30 days of the receipt of notice, as to why the differential custom duty should not be demanded and recovered from the Petitioner under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the said Act.
4. Present petition has been filed assailing the Show-Cause Notice as also seeking a direction to the Respondent to grant personal hearing to

the Petitioner at the Pre-Notice Consultation stage. The principal ground urged in the petition, while denying the alleged misclassification and the liability to pay the differential custom duty, is that the Pre-Notice Consultation letter dated 01.06.2021 was received by the Petitioner on 10.06.2021 and hence, the Petitioner was not in a position to appear before the Respondent and/or file his written submissions. The entire exercise was only an empty formality as it was well known to the Respondent that a notice dispatched through a registered post on 01.06.2021 shall not be received by the Petitioner by 02.06.2021 and, therefore, there is complete violation of principles of natural justice. Since the Petitioner was not given adequate opportunity to appear for a personal hearing on 02.06.2021, the issuance of Show-Cause Notice is bad in law and deserves to be quashed.

5. Notice was issued to the Respondent and time was sought by the learned counsel to take instructions in the matter.
6. A perusal of the Pre-Notice Consultation letter dated 01.06.2021 reveals that *vide* the said notice, Respondent had called upon the Petitioner to appear before the concerned authority on 02.06.2021 at 15:00 hours for a personal hearing. Petitioner has made a categorical averment in the writ petition that the notice was served on him through a registered post on 10.06.2021. It is understandable that if the notice was served on the Petitioner on 10.06.2021, there could be no representation on behalf of the Petitioner on 02.06.2021. In fact, in our view, the action of the Respondent in issuing a notice on 01.06.2021 for a hearing on 02.06.2021 is completely arbitrary as it

would have been well-known to anyone with a prudent mind that a notice sent by registered post on 01.06.2021 may not reach the addressee for appearance on 02.06.2021 at 15:00 hours. Additionally, the haste to fix the personal hearing within 24 hours of issuance of the notice gives rise to a presumption that the Respondent did not apply its mind before issuing the notice. The action, according to us, is impermissible in law as the notice appears to be an empty formality. Principles of natural justice require and mandate that reasonable and sufficient opportunity of being heard ought to have been given by the Respondent to the Petitioner and, therefore, while issuing notice, it ought to have been kept in mind that sufficient time was given before fixing the personal hearing so that the notice could be served on the Petitioner for appearance of its representative for personal hearing to put-forth the case on behalf of the Petitioner. One wonders if a similar treatment were being meted out to the Respondent, i.e. notice is issued by the Court returnable on the next day, whether the officials of Department would be in a position to appear and defend the case, assuming that the notice is served.

7. On the last date of hearing, learned Additional Solicitor General had sought time to take instructions in the matter considering the above facts. Mr. Chetan Sharma, learned Additional Solicitor General, on instructions, submits that the Respondent shall grant personal hearing to the Petitioner pursuant to the pre-notice consultation letter dated 01.06.2021, to enable the Petitioner to defend the allegations levelled against him.

8. In view of the aforesaid facts and submission of the learned Additional Solicitor General, we hereby quash and set aside the Show-Cause Notice dated 02.06.2021, which is Annexure P-2 to the memo of this petition, and revive the Pre-Notice Consultation letter dated 01.06.2021. It is directed that the Petitioner shall appear before the Respondent for a Pre-Notice Consultation personal hearing on 16.09.2021 at 11 a.m. Needless to state that it is open to the Respondent to take a decision based on the case of the parties as put forth during the personal hearing and accordingly chart further course of action, if any, in accordance with law.
9. Writ petition is allowed and disposed of in the above terms along with the pending application.

CHIEF JUSTICE

JYOTI SINGH, J

SEPTEMBER 09, 2021
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