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

WRIT PETITION NO. 60 OF 2005

Sarla Performance Fibers Limited
304, Arcadia, 195, Nariman Point,
Mumbai – 21.

A company registered under the
Companies Act, 1956, having its
registered office at Unit – I,
Survey No. 59/1/4, and Unit – II,
Survey No.64/2/3/4/, Amla,
Piparia Industrial Estate, Piparia,
Silvassa (U.T. of D. N. & H)

....Petitioner

V/s.

1. The Union of India
2. The Assistant Commissioner of
Central Excise, Division – II,
Silvassa having his office at
Jaypee House, Opp. Patel Petrol
Pump, below HDFC Bank,
Silvassa.

...Respondents

Mr. Prakash Shah i/b M/s. DSK Legal for Petitioner.
Mr. Vijay H. Kantharia a/w Mr. Ram Ochani for Respondents.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 22nd JULY, 2022**

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. Petitioner is impugning an order dated 10th January 2005 passed by Respondent No.2 by which Respondent No.2 has cancelled the licence under Sub Section 2(b) of Section 58 granted to petitioner under Sub Section (1) of Section 58 of the Customs Act, 1962 (the Act). Respondent No.2 has also ordered petitioner to pay appropriate customs and central

excise duties under the Customs and Central Excise Act, 1944 on the capital goods and raw material procured duty free, semi finished and finished goods lying in stock on the date of cancellation of the said licence.

2. Rule was issued on 4th February 2005 and interim relief in terms of prayer clause (c) subject to certain conditions imposed therein, modified by an order dated 5th May 2005, was granted. Pursuant to the interim orders petitioner has also made certain deposits with Respondent No.2. Petitioner is a company registered under the Companies Act, 1956 and engaged in the manufacture of exciseable goods namely synthetic yarn. Petitioner had its factory at Piparia Industrial Estate, Silvasa. Petitioner was 100% export oriented unit (EOU) in terms of the import export policy. Petitioner was carrying on its manufacturing activity of synthetic yarn at its factory being Unit-I and Unit-II, both independent units at Pipariya, Silvasa. Unit-I had been licenced under Section 58 of the Act as private bonded warehouse vide licence dated 18th October 1994. Respondent No.2 extended licence for a further period of two years with effect from 18th October 1999. It was further extended for a period of two years with effect from 18th October 2001 and once again for a further period of two years from 18th October 2003 to 31st March 2005.

3. Unit-II of petitioner also was licenced under Section 58 of the Act as private bonded warehouse vide licence dated 14th November 2003. The licence was valid till 31st March 2005.

4. During the course of its business, petitioner received various show cause notices and complaints were also registered against petitioner for alleged violation of the licence requirement. Petitioner's licence was also suspended by Respondent No.2 without issuing show cause notice and without affording an opportunity of being heard and without pendency of an enquiry under Clause (b) of Sub Section (2) of Section 58 of the Act. This order was challenged by petitioner in Writ Petition No.7049 of 2004 that was filed in this court. This court by an order dated 2nd September 2004, set aside the order of Respondent No.2.

5. Thereafter, Respondent No.2 issued show cause notice dated 4th October 2004 calling upon petitioner to show cause as to why licence granted to petitioner should not be cancelled for the reasons mentioned therein. Petitioner replied to the show cause notice and was also granted personal hearing. Notwithstanding petitioner's explanation, Respondent No.2, by an order dated 1st January 2005, cancelled petitioner's licence and also called upon petitioner to pay the appropriate customs and central excise duty as referred earlier. Impugning the said order dated 10th January 2005 petitioner has approached this court by way of this writ petition.

6. Mr. Shah submitted that in the show cause notice dated 4th October 2004 Respondent No.2 has simply relied upon six show cause notices issued which was still pending adjudication and complaint that was

filed by DRI which was still pending investigation. Mr. Shah submitted that on the date the show cause notice dated 4th October 2004 was issued there was no conclusive finding that petitioner was in breach of any of the requirements for maintaining licence issued under Section 58 of the Act. Mr. Shah also submitted that the entire issuance of show cause notice was premature because there was no evidence to show that petitioner had contravened any provisions of the Act or the rules or the regulations or committed breach of any of the conditions of the licence.

7. Mr. Kantharia submitted that in some of the show cause notices adjudication orders were passed against petitioner and in case of one of the show cause notice there was also adjudication order before the show cause notice in the case at hand had been issued. Mr. Kantharia also submitted that in the issuance of show cause notice, Respondent No.2 had relied upon various documents including panchanama recorded in other proceedings. Mr. Kantharia submitted that petitioner was known to be repeat offender and had repeatedly breach and contravened the provisions of the Act and rules regulations and committed breach of the conditions of the licence.

8. With the aid of Mr. Shah and Mr. Kantharia we have considered the show cause notice and the impugned order. The entire show cause notice proceeds on the basis of six show cause notices that had been issued to petitioner and an offence have been booked by DRI against petitioner and hence it

appears that petitioner has contravened the provisions of Section 71, 72 of the Customs Act, 1962 read with Condition No. 6 of licence dated 14th November 2003 and 18th October 1994. There is nothing more in the show cause notice. Therefore, it is quite clear that Respondent No.2 has issued Show Cause Notice on the basis of pending show cause notices and a complaint which were yet to be adjudicated. Mr. Kantharia submits that later some of the show cause notices were adjudicated against petitioner and in one matter it was already adjudicated before show cause notice dated 4th October 2004 was issued. It can be of no assistance to respondent because that is not the case of Respondent No.2 in the show cause notice dated 4th October 2004 that he had issued to petitioner.

9. Even in the impugned order which was passed almost more than three months later, there is no reference to any of the orders being passed as suggested by Mr. Kantharia. Even the impugned order proceeds on the basis of show cause notice issued to petitioner which was pending adjudication and the offence that had been booked by DRI which was pending investigation. Respondent No.2 gives finding against petitioner of diverting of goods in contravention of the provisions of Section 71 of the Act and he also relies on certain panchanams. None of these points were mentioned in the show cause notice to enable petitioner to satisfactorily show cause. Respondent No.2, in the impugned order, says though separate proceedings have been initiated against petitioner for evasion of duty and

show cause notices have been issued for duty evaded by them as detailed in these show cause notices, the licensee has contravened the provisions of the Act, the rules and regulations framed there under and committed breach of condition of the license granted under Sub Section (1) of Section 58 of the Act. In effect Respondent No.2 proceeds to adjudicate all those show cause notices in the impugned order.

Section 58 of the Act which was in force at the relevant point of time under Sub Section 2(b) provides that the Assistant Commissioner may cancel a licence if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence. It also provides that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard. The points which Respondent No.2 has mentioned in the impugned order do not even find mention in the show cause notice that was issued to petitioner. Issuance of show cause notice is not an empty formality. Its purpose is to give a reasonable opportunity to the affected persons to contend with the allegations in the show cause notice are not correct. The person issuing show cause notice shall inform a person who is likely to be affected by any order proposed to be made about the materials on the basis of which the authority proposes to take action and give a fair and reasonable opportunity to such person to represent his case and to correct or controvert the material sought to be relied upon against him.

10. Paragraph No.8 of the judgment of this court in ***Jugal Kishore Jajodia vs. S.C. Prasad, Chief Engineer¹*** reads as under :-

8. *It is settled law that issuance of a show-cause notice is not an empty formality. Its purpose is to give a reasonable opportunity to the affected persons to contend that the apparent consideration as per the agreement to sell is the market price or that there is no undervaluation because of peculiar facts. The appropriate authority should give to the person likely to be affected by the order proposed to be made a notice of the action intended to be taken, inform him about the materials on the basis of which the appropriate authority proposes to take action for preemptive purchase and give a fair and reasonable opportunity to such person to represent his case and to correct or controvert the material sought to be relied upon against him. Hence, in the show-cause notice under Section 269UD of the Act, provisional conclusions are required to be briefly specified. These provisional conclusions are required to be briefly specified so that the affected persons could correct or controvert the same effectively. If a vague show- cause notice is given without specifying anything as has been done in this case or without specifying the grounds for holding that the property is required to be purchased under Section 269 UD of the Act, then it can be held that reasonable opportunity of showing cause has not been given. The transferor and transferee would be totally unaware of the grounds which had prompted the appropriate authority to arrive at prime facie conclusion that the power under Section 269UD(1) of the Act was required to be exercised and the property should be compulsorily purchased. The Division Bench of Gujarat High Court in Om Shri Jigar Association v Union of India [1995] 80 Taxman 514/[1994] 209 ITR 608 at paragraphs 7, 8 and 9 held as under :-*

"7. In our view, considering the findings given above, it is not necessary to deal with the aforesaid contention exhaustively. However, it should be noted that issuance of a show-cause notice is not an empty formality. Its purpose is to given a reasonable opportunity to the affected persons to contend that the apparent consideration as per the agreement to sell is the market price or that there is no undervaluation because of peculiar facts. Therefore, before taking any action under section 269UD(1) of the Income-tax Act, the appropriate authority should give to the person likely to be affected by the order proposed to be made a notice of the action intended to be taken, inform him about the material on the basis of which the appropriate authority proposes to take action for

¹ (2022) 135 taxmann.com 329 (Bombay)

preemptive purchase and give a fair and reasonable opportunity to such persons to represent his case and to correct or controvert the material sought to be relied upon against him. Hence, in the show-cause notice under section 269UD of the Income-tax Act, provisional conclusions are required to be briefly specified. If a vague show-cause notice is given without specifying anything or the grounds for holding that the property is required to be purchased under section 269UD of the Income-tax Act, then it can be held that reasonable opportunity of showing cause against an order for preemptive purchase being made by the appropriate authority was not given, because the transferor and the transferee would be totally unaware of the grounds which had prompted the appropriate authority to arrive at prime facie conclusion that the power under section 269UD(1) of the Income-tax Act was required to be exercised and the property should be compulsorily purchased. Issuance of a show-cause notice is the preliminary step which is required to be undertaken before giving opportunity of hearing under Section 269UD(1) of the Income-tax Act.

8. While considering the contents of show-cause notice in the matter arising in connection with a disciplinary proceeding under the Punjab Civil Services (Punishment and Appeal) Rules, 1952, the Supreme Court has in the case of B.D. Gupta v. State of Haryana, (1973) 3 SCC 149 : AIR 1972 SC 2472 observed as under (at page 2474) :

"There is nothing, however, in the 'Show-Cause Notice' of 26th October 1966 to indicate clearly that the dissatisfaction of Government with the appellant's reply of 18 December 1956 had nothing to do with Charge 1(a). The 'Show-Cause-Notice' merely states in vague general terms that the appellant's reply to the charges and allegations was unsatisfactory. Even if we were to assume, though there is no reasonable ground for this assumption, that Government did not have in mind the contents of Charge 1(a) while serving this 'Show-Cause-Notice', there is nothing in the 'Show- Cause-Notice' to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to Charge 1(b). The notice is vague on other grounds as well. As one reads the first paragraph of the notice, the questions that at once assail one's mind are many : In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the

appellant's explanation was unsatisfactory ? It is to our mind essential for a 'Show-Cause-Notice' to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply."

9. The same would be the position here. It would be difficult for the transferor and the transferee to show cause as to why the property should not be compulsorily purchased or to point out that there is no undervaluation of the property or even if there is undervaluation, it is because of the peculiar facts regarding the property.

11. If Respondent No.2 was relying on any seizure panchanama or any other material, the same should have been mentioned in the show cause notice issued to afford fair and reasonable opportunity to petitioner to respond. That has not been done. Further, Respondent No.2 for issuing show cause notice has relied upon six show cause notices and an offence booked by DRI but none of these had attained finality. They were pending at various stages. At the time show cause notice in the case at hand was issued there was every possibility that the show cause notices and the complaint on which Respondent No.2 had relied upon to issue show cause notice could have been discharged or withdrawn against petitioner. Therefore, in our view, issuance of show cause notice itself was premature.

12. In the circumstances, we hereby quash and set aside the impugned order dated 10th January 2005.

13. It is open to Respondent No.2, if it is still within the limitation prescribed in law, to take such steps as advised in accordance with law.

14. Any amount deposited by petitioner pursuant to the orders passed by this court shall be returned to petitioner, together with interest, if any, in accordance with law within four weeks of receiving application from petitioner.

So also the bank guarantee submitted to the Registrar General of this Court together with extensions thereon shall be cancelled and returned duly discharged to petitioner.

15. Petition disposed. No order as to costs.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)