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

CUSTOMS APPEAL NO.3 OF 2020

The Commissioner of Customs (Export) .... Appellant.
Vs.
Navbharat Enterprises Ltd. .... Respondent.

Mr. Dhananjay B. Deshmukh for Appellant.
Ms Arya Anil i/b Mr. Sriram Sridharan for respondent.

CORAM : K.R. SHRIRAM &
N.R.BORKAR, JJ.

DATE : 21st APRIL, 2022.

P.C.:

1. Appellant is impugning order dated 20.12.2018 passed by Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai and has proposed the following substantial question of law.

> *"Whether the CESTAT is right in law in setting aside demand of Rs.1,00,47,253/- together with interest thereon and penalty of Rs.10,00,000/- imposed u/s 112 of the Customs Act, 1962 holding that the Show Cause Notice and Order-in-Original contain errors that are impossible to repair or rectify?"*

2. We have considered the order passed by CESTAT and do not find any reason to interfere with the said order. According to appellant, respondent

had imported various permissible inputs under 'duty exemption entitlement certificate' scheme in the Foreign Trade Policy for which it had license which was dated 24.6.1993. According to appellant, it was later determined that the license-holder had failed to discharge its obligation to evidence that credit of duty under Rule 56A/57A of Central Excise Rules, 1944, on inputs procured locally or otherwise, for use in manufacture of the export goods had not been availed. Appellant proceeded against respondent for non compliance with condition No. (v)(a) of Notification No.203/92-Cus dated 19/05/1992.

3. Show Cause Notice was adjudicated by the Commissioner of Customs, CSI Airport, Mumbai vide order dated 22.06.2000 by which he confirmed demand of Rs.1,00,47,253/- and imposed penalty of Rs.10 lakhs u/s 112 of the Customs Act, 1962.

4. Aggrieved by the said order, respondent filed appeal before CESTAT and CESTAT was pleased to allow appeal on 20.12.2018. It is against that order, appellant has approached this Court. It is respondent's case that they never received the show cause notice and hence, could not even reply. Mr. Deshmukh, Counsel for appellant submitted that the Court may set aside order impugned and direct respondent to respond to show cause notice and

Commissioner of Customs may pass an order based on the submissions made by respondent.

5. In our view, having considered the show cause notice, same is not sustainable. When appellant is alleging that respondent had not availed of MODVAT credit or inputs or raw material, the onus is on appellant to show that respondent had availed of MODVAT credit on inputs produced from local market. We find support for this view in the pronouncements of the Apex Court and High Court in following cases.

1) Commissioner of Customs Vs. Auto Ignition Ltd.,[1]

2) Collector of C.Ex. Vs. Decent Dyeing Co.[2] ***and***

3) Commissioner of C.Ex., Chandigarh Vs. Khalsa Charan Singh & Sons[3]

In our view, appellant has failed to substantiate these allegations against respondent. Even show cause notice issued is *bereft* of any particulars.

In show cause notice, in paragraph no.5, Commissioner of Customs says,

> *"AND BILLS OF ENTRY NUMBERS (AS PER ANNEXTURE) SHOULD NOT BE DENIED AND THE DUTY AMOUNTING TO RS.10047253/- ALONGWITH INTEREST AT 24% PER ANNUM SHOULD NOT BE DEMANDED AND RECOVERED FROM THEM UNDER SECTION 28 OF THE CUSTOMS ACT 1962."*

1 2008(226) E.L.T.14 (S.C.)
2 1990 (45) E.L.T. 201 (S.C.)
3 2010 (255)E.L.T.379(P & H)

Annexure is totally blank. It does not indicate what was bill of entry number or bill of entry date or quantity or value etc. There is hand written noting as under;

> *" (x)10047253.10.*
> *(x) Bond amount taken on duty foregone."*

6. In the circumstances, since no details have been provided even in the show cause notice to direct respondent to appear and answer such show cause notice would be only adding to their agony. In our view it would not be even possible to answer the show cause notice without any particulars mentioned therein.

7. In the circumstances, in our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

The appeal is devoid of merits and it is dismissed with no order as to costs.

(N.R. BORKAR, J.) **(K.R.SHRIRAM, J.)**

Chitra Sonawane