IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.2335 of 2020 and
WMP.Nos.2717 & 2720 of 2020

T.S.Binesh Kumar ... Petitioner

Vs

1.The Additional Commissioner of Customs,
Group 5A, Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Customs House, 60, Rajaji Salai,
Chennai – 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with Order-in-Original No.45505 of 2016 dated 08.03.2016 passed by the 1st respondent herein and to quash the same so far as it pertains to the imposing penalties on the petitioner amounting to Rs.15,00,000/- and another Rs.5,00,000/- under Section 112(a)/112(b) and Section 114AA of the Customs Act contrary to the provisions invoked and without jurisdiction and also in gross violation to the principles of natural justice.

For Petitioner : Mr.N.Viswanathan
For Respondents : Ms.Lydia Steffi
for Mr.Rajnish Pathiyil
Senior Central Government Standing Counsel

O R D E R

The petitioner challenges an order-in-original dated 08.03.2016 that imposes penalties under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 (in short 'Act').

2.The substratum of the writ petition that has been filed in 2020 challenging an order passed in 2016, is that the impugned order was never served upon the petitioner in a manner known to law. It was only when recovery that was sought to be taken as against the petitioner for the disputed penalty that the petitioner came to know that such an order had come to be passed.

3.Per contra, learned standing counsel has produced an extract of the dispatch register that establishes, according to them, that the said order has been dispatched on 10.03.2016 to the addresses provided by the petitioner. The tracking IDs have also been supplied. The respondents have written to the Sub-Post Office, Tiruvottiyur in February, 2020 stating that since they were unable to track the service of the documents, a confirmation may be provided by the postal department. There has been no reply to this letter from the post master.

4.The respondent thus relies on a decision of a Division Bench of this Court in *B.Bhoormal Tirupati vs. The Additional Collector of Customs, Custom House, Madras* (WA.No.155 of 1973 dated 22.08.1973). In that case, the notice had been sought to be served by registered post, but had been returned with endorsement 'left' and the Bench answered the question of service in favour of the revenue. They held that notice was sent to the proper address, pre-paid and posted by registered post and there was an endorsement 'left'. Hence, the burden would lie upon the addressee to state that such notice had not been received by him. At paragraph-3, they state as follows:

> *'3.The only point that arises is whether the service by registered post effected on 13-5-1969, which was returned with the endorsement 'left', is sufficient notice. Section 153 of the Act states that any order or decision passed or any summons or notice issued under the Customs Act, shall be served (a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; sub-sec. (b) of S. 153 need not be referred to as it does not arise in this case. A notice had been sent by registered post duly addressed to the appellant. The section requires that notice shall be served by sending it by registered post to the person for whom it is intended. The section does not require that effective service should be effected by the appellant receiving it. This position is made clear by reference to Section 27 of the General Clauses Act, which states that where any Central act requires any document to be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter obtaining the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed, pre-paid and posted by registered post. That the notice was sent to proper address, pre-paid and posted by registered post is not under dispute. No other attempt has been made to prove the contrary. The endorsement 'left' is not sufficient to prove the contrary. Apart from it, a reading of the section indicates that the proof to the contrary can only be*

> *limited to proving that the service had not been effected at the time at which the letter would be delivered in the ordinary course of post. We find no difficulty in coming to the conclusion that there has been proper service of notice. The writ petition was rightly dismissed. This appeal fails and it is dismissed.'*

5.Thus, learned Standing Counsel would submit that the fact that the orders had been sent for service, as evidenced by the dispatch register, would tantamount to proper service in terms of Section 153 of the Act.

6.Heard Mr.N.Viswanathan, learned counsel for the petitioner and Ms.Lydia Steffi, learned counsel for Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel for the respondents.

7.The provisions of Section 153 provide for different modes of service of notice, orders and other proceedings under the Customs Act, 1962. Section 153, as it stood at the relevant point in time and pre-substitution in 2018, reads as follows:

> "**153.** ***Modes for service of notice, order, etc.***—(*1*) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—
>
> (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
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> (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

> (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
>
> [(ca) by making it available on the common portal;]
>
> (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
>
> (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.
>
> (*2*) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).
>
> (*3*) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.".

8.In the present case what has been produced by the respondent is only the extract of dispatch register, which shows that the impugned orders were sent by speed post. This is not a proper method of service in terms of Section 153, which requires the tendering of the order by registered post or by such courier as may be approved by the Principal Commissioner/Commissioner of Customs.

9.Since there is no material to indicate that speed post was an approved mode of service and learned Standing Counsel has not advanced any such argument, it cannot be said that the issuance of the orders by speed post would satisfy the requirements of Section 153. Hence, reliance of learned Standing Counsel on Section 153, pre-amendment in 2018 does not advance her case.

10.Seeing as all that the petitioner wants is an opportunity to challenge the order-in-original that is adverse to him, the petitioner is permitted to approach the first appellate authority, despite the intervening delay and Ms.Lydia Steffi, learned Counsel, acceedes to this course of action.

11.Appeal, if filed, within a period of three (3) weeks from date of receipt of a copy of this order, shall be taken on file by the Commissioner of Customs (Appeals) without reference to limitation, but ensuring compliance with all other statutory pre-conditions to maintain an appeal, including pre-deposit and the petitioner shall be heard and the appeal disposed in accordance with law.

12.This writ petition is disposed in the above terms. No costs. Connected miscellaneous petitions are closed.

15.11.2022

Index : Yes
Speaking Order
vs

To

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Dr.ANITA SUMANTH,J.

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