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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.09.2022

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W.P.(C) 7325/2020

M S RAINBOW FASHIONS

.....Petitioner

Through: Mr Prem Ranjan Kumar, Advocate.

versus

THE DEPUTY COMMISSIONER OF CUSTOMS.....Respondent

Through: Ms Suhani Mathur, Advocate for Mr
Harpreet Singh, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Court hearing/ Hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This writ petition is directed against the order dated 24.09.2020, passed by the Deputy Commissioner of Customs (GR-III).
2. A perusal of the order shows, that the aforementioned impugned order was passed, based on an order dated 24.06.2020 passed by this Court.
3. The record shows, that the order dated 24.06.2020 was passed by a coordinate Bench in W.P.(C) 3714/2020.
4. A perusal of the order shows, that the grievance articulated by the petitioner before the coordinate Bench, in the earlier round, was that although the subject bills of entry had been provisionally assessed, the respondent/revenue had taken no steps to pass a final assessment order.
5. The period, with which we are concerned, spans between 2013 and



2016.

6. According to the respondent/revenue, this period concerns 103 bills of entry; out of which 8 bills of entry had been assessed finally.

The respondent/revenue has indicated in the counter-affidavit, that remaining 95 bills of entry were assessed provisionally.

7. The goods involved in the present case are polyester knitted fabric and other fabrics. The petitioner has imported the subject goods from China.

8. Insofar as the 95 bills of entry are concerned, which, as indicated above, were provisionally assessed; samples were drawn by the respondent/revenue, to ascertain the nature and composition of the fabric.

9. It appears, that only after this Court passed a direction on 24.06.2020, as noticed above, were the said bills of entry, which are in 95 number, finally assessed.

10. It is also the case of the respondent/revenue, that the final assessment has been done under the CTH(Customs Tariff Heading), which was declared by the petitioner in its bills of entry.

11. What is required to be noticed, is that the respondent/revenue claims, that intimation with regard to 95 bills of entry, as already finally assessed, was forwarded internally to Deputy Commissioner (Legal), ICD, Tughlakabad on 24.07.2020.

12. It is also the case of the respondent/revenue, that intimation in this behalf was also given to the petitioner *via* letter dated 04.11.2020.

13. Pertinently, neither the internal communication dated 24.07.2020, nor the letter dated 04.11.2020 has been appended to the counter-affidavit filed on behalf of the respondent/revenue.

14. There is, therefore, no way of knowing, as to whether such an



intimation was, in fact, given to the petitioner.

15. Mr Prem Ranjan Kumar, learned counsel for the petitioner, says that the petitioner has received no intimation with regard to the subject bills of entry being finally assessed.

16. What is of relevance here is, that the impugned order is dated 24.09.2020, whereas according to the counter-affidavit filed on behalf of the respondent/revenue, as noticed above, intimation was given to the petitioner only thereafter i.e., *via* the letter dated 04.11.2020.

17. Be that as it may, the principal grievance of the petitioner is, that the impugned order is bereft of reasons.

18. It is also contended by Mr Kumar, that there has been a complete violation of the principles of natural justice, as no show-cause notice was issued, prior to the passing of the impugned order.

19. It is not disputed, that the power to finally assess the subject bills of entry is contained in sub-section (2) of Section 18 of the Customs Act, 1962 [in short the “Act”].

19.1 Although Section 18 of the Act does not specifically advert to issuance of a show-cause notice, in our view, it is implicit in the said provision.

19.2 The final assessment of the bills of entry, whereby a variance is brought about in the valuation of the subject goods, which is adverse to the interests of the petitioner, would have to be communicated to the affected party (in this case, the importer i.e., the petitioner).

20. Admittedly, in this case, the valuation of the subject goods, which forms part of 95 bills of entry, has been enhanced. The basis for enhancement of valuation, apparently, was not communicated to the



petitioner. According to us, that is the first infraction, which has been committed by the respondent/revenue. 20.1 The other infraction, in law, which is palpable in this case, is that the impugned order furnishes no reasons. It is well settled, that reasons are a link between material appraised by the statutory authority, and the conclusion reached in the matter. [See: ***Union of India vs Mohan Lal Capoor 1974 SCR (1) 797***]

20.2 In the instant case, the impugned order merely states that the bills of entry have been finalized.

21. It appears that refuge, in this behalf, has been taken by the concerned authority while passing the impugned order, although erroneously, in the order dated 24.06.2020, passed by the coordinate Bench in W.P. (C) 3714/2020.

22. A careful perusal of the order would show that the Court only issued a direction that the respondent/revenue will finally assess the subject bills of entry, within six weeks.

22.1 There was no direction issued by the Court, that the requirements of law i.e., principles of natural justice would not have to be adhered to.

23. In our view, the impugned order cannot be sustained.

23.1 It is, accordingly, set aside.

24. The respondent/revenue will apply their mind afresh, and carry out *de novo* exercise of finally assessing the 95 bills of entry, which are the subject matter of dispute in the instant writ petition.

25. Before the concerned authority embarks on this journey, it will issue a show-cause notice to the petitioner, detailing out its proposal concerning the valuation of the subject goods, which stand covered by the bills of entry in issue.



26. Furthermore, the relevant material, based on which the respondent/revenue seeks to enhance the valuation of the subject goods will also be furnished to the petitioner. The petitioner and/or its authorized representative will also be granted a personal hearing in the matter.

27. The concerned authority, thereafter, will pass a speaking order; a copy of which will be furnished to the petitioner.

28. In case the speaking order passed by the concerned authority is adverse to the interests of the petitioner, the petitioner will have the liberty to assail the same, *albeit*, as per law.

29. The writ petition is disposed of in the aforesaid terms.

30. We may note, that Mr Kumar concedes, that inadvertently, in the prayer clause, there is a reference of Section 17(5) of the Customs Act, 1962. To our minds, that by itself will not come in the way of the petitioner, as it is a typographical error.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 8, 2022/pmc