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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11442 OF 2024

Mr. Debashish Mazumdar and ors. : Petitioners

Versus

Additional Commissioner of Customs
NS-II, JNCH, Nhava Sheva NS-V & ors. : Respondents

Mr Rohan Shah, Senior Advocate, a/w Adv. Sabri Rajan, Adv. Arnab Roy and Adv. Ankit Trivedi i/by Vaish Associates for the Petitioners.

Ms Jaimala Ostwal, a/w Ms Sangeeta Yadav for the Respondents.

CORAM **M.S. Sonak &
Jitendra Jain, JJ.**
DATED: **17 December 2024**

ORAL JUDGEMENT :- (*Per M. S. Sonak, J.*)

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The Petitioners challenge Order-In-Original dated 24 November 2023 to the extent this order imposes a penalty of Rs. Twenty Crores under Section 114AA of the Customs Act, 1962, collectively on the Petitioners.
4. Though this order would be appealable, there is no point in relegating the Petitioners to the alternate remedy because this is a clear case where the impugned Order-In-Original has been made without serving any show cause notice upon the Petitioners – Directors. The record shows that the show cause notice dated 08

June 2023 was addressed only to the Company, calling upon the Company to show cause *inter alia* why no penalty should be imposed on the Company. This notice was not addressed, marked or served on the Petitioners. No opportunity was ever granted to the Petitioners to show any cause or for a hearing before the order, which visits the Petitioners with serious consequences, was made.

5. In a similar circumstance, this Court, vide its order dated 03 December 2024 in the case of **Devanshu Desai vs. Union of India and Ors.**¹, quashed the order made against an independent Director without serving any show cause notice.

6. Therefore, on the ground of violation of principles of natural justice and following our order in the case of *Devanshu Desai* (supra), we quash and set aside the impugned Order-In-Original dated 24 November 2023 in so far as it concerns the Petitioners herein.

7. Ms. Ostwal, the learned counsel for the Respondents, submits that this order should not preclude the Respondents from issuing a show cause notice and acting under the law. Accordingly, we clarify that this order shall not preclude the Respondents from issuing a show cause notice and following the law. However, all parties' contentions in this regard are explicitly kept open.

8. The rule is made absolute in the above terms without any costs order.

(Jitendra Jain, J)

(M.S. Sonak, J)

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Writ Petition No.18 of 2023