IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Before:
The Hon'ble Justice Om Narayan Rai

WPO 712 of 2025

DHAWAL VORA & ANR.
VS.
UNION OF INDIA AND ORS.

For the Petitioner	: Ms. Micky Chowdhary, Adv. Mr. B. N. Pal, Adv.
For the Respondents	: Mr. Bhaskar Prosad Banerjee, Adv. Mr. Kaustav Kanti Maiti, Adv.
Hearing Concluded on	: 26.02.2026
Judgment on	: 26.02.2026

Om Narayan Rai, J.:-

1. This writ petition assails an order in appeal dated March 17, 2025 passed by the Commissioner of Customs (Appeals) thereby dismissing the petitioner's appeal against an order in original dated September 9, 2024.

2. A notice to show cause dated November 7, 2023 had been issued to the petitioner no.2 (hereinafter the petitioner) calling upon the petitioner to explain as to why penalty should not be imposed upon the petitioner inter alia on the ground of wrong classification of imported goods and short payment of customs duty.

3. The petitioner replied to the said notice. Upon considering the petitioner's reply, the adjudicating authority held against the petitioner. The order in original passed by the adjudicating authority on September 9, 2024 was carried in appeal before the Commissioner of Customs (Appeals) i.e. the appellate authority. The appellate authority has dismissed the petitioner's appeal by the order impugned. Hence this writ petition.

4. Ms. Chowdhary, learned Advocate appearing for the petitioner submits that the order in appeal has been passed without affording the petitioner an opportunity of hearing. It is submitted that no notice whatsoever was served upon the petitioner and as such the petitioner could not appear before the appellate authority to state its case.

5. Upon the writ petition being initially heard, a report in the form of an affidavit was called for from the respondent customs authorities in order to ascertain as to whether notice of the appellate proceedings was given to the petitioner or not.

6. In terms of the directions of this Court a report in the form of an affidavit has been filed by the Assistant Commissioner of Customs, Appraising Legal (Port)), Kolkata which evinces that notices dated November 28, 2024, December 18, 2024 and January 1, 2025 had been issued by the respondent customs authorities to the petitioner but all such notices returned undelivered. While the notice dated November 28, 2024 was returned with the endorsement "ACNL, RTS", the notice dated December 18, 2024 was returned with the endorsement "No such company in this address and Not Known" and the notice dated January 1, 2025 was returned with the endorsement "Left".

7. The report does not indicate that notice by any other mode was served or attempted to be served upon the petitioner. Mr. Banerjee, learned Advocate appearing for the respondent customs authorities submitted that once the respondent customs authorities had issued notices by post, they had discharged their obligation of serving notice on the person concerned and if notices have remained unserved for reasons not attributable to the customs authorities, the customs authorities cannot be faulted.

8. Ms. Chowdhary, learned Advocate appearing for the petitioner, in reply, invited attention of this Court to Section 153 of the Customs Act, 1962 which provides for mode of service of notice, orders etc. and submitted that there is a provision for deemed service of notice which can be resorted to only in situations where notices which have been put in transit have not returned and nothing contrary has been proved. It was submitted that in the case at hand when the notices evidently returned unserved there was a clear contrary indication that notices had not been served. In such view of the matter, the respondent customs authorities ought to have resorted to the other alternative modes of service indicated in the said section. In support of her contention, she relied on two judgments of the Hon'ble Division Bench of the Delhi High Court in the case of ***Muhammad Nazim Vs. Commissioner of Customs and Others*** reported at ***2025 SCC OnLine Del 1627*** and ***Bonanza Enterprises Vs. Assistant Commissioner of Customs and Another*** reported at ***2024 SCC OnLine Del 9351***.

9. Heard the learned Advocates appearing for the respective parties and considered the material on record.

10. A reading of the provisions of Section 153 of the said Act of 1962 makes it clear that several modes of service of notice have been provided for therein. The deeming provision under Section 153(3) thereof provides that a notice will be deemed to have been served upon the addressee at the expiry of the period normally taken by such post in transit only if the contrary is not proved. In the case at hand the contrary has been proved in the sense that the notices returned unserved to the customs authorities and the appellate authority while going through the records must have gone through the returned articles. If even after having noticed the returned articles the appellate authority did not take steps for effecting further service through any other mode in the considered view of the Court he committed an error and his action falls foul of the provisions of Section 153 of the said Act of 1962.

11. Conversely if the appellate authority did not notice such returned article and held that service was satisfactorily done, that again is an impeachable decision. In both the aforesaid situation, denial of opportunity of hearing is evident.

12. It is not in dispute that the customs authorities have served the appellate order impugned upon the petitioner through e-mail (as would appear from page 175 of the writ petition). Therefore, the e-mail address of the petitioner was very well there with the customs authorities.

13. In such view of the matter, once it was clear that notices of hearing of the appeal sent by the customs authorities to the petitioner were not served upon the petitioner, it was incumbent on the customs authorities to try serving the same upon the petitioner by any of the other modes were available under Section 153 of the said Act of 1962.

14. The Hon'ble Division Bench of Delhi High Court has in the aforesaid cases ***Muhammad Nazim*** (supra) and ***Bonanza Enterprises*** (supra), expressed an expectation that the customs department would adhere to the direction that notices are sent on the e-mail addresses of the persons concerned in addition to the other modes prescribed in Section 153.Such observation of the Hon'ble Delhi High Court is apt in the present context.

15. Since there has been a clear violation of principles of natural justice, the order impugned must be interfered with. It is clarified that this Court is interfering with the order impugned despite the appellate remedy being available because this case falls within one of the exceptions for entertaining a writ petition notwithstanding statutory remedy, namely - the order impugned has been passed in violation of principles of natural justice without affording an opportunity of hearing to the petitioner.

16. For all the reasons aforesaid, the order impugned dated March 17, 2025 is set aside and the matter is remanded to the appellate authority for fresh consideration. The appellate authority shall afford an opportunity of personal hearing to the petitioner and then pass appropriate order as expeditiously as possible preferably within four weeks from the date of communication of this order.

17. It is made clear that this Court has not gone into the merits of the petitioner's case and all points are left open to be decided by the appellate authority.

18. WPO 712 of 2025 stands disposed of. No costs.

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(OM NARAYAN RAI, J.)

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