

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 51112 of 2020-SM

(Arising out of order-in-appeal No. CC(A)/CUS/D-I/EXP/NCH/182/2019-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Baldeep Singh

D-164, Punjabi Basti, Baljeet Nagar
New Delhi-110008.

Appellant

VERSUS

Commissioner of Customs

ACC (Export), New Customs House
Near IGI Airport, New Delhi-110037.

Respondent

APPEARANCE:

Shri Akhil Krishan Maggu, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

Coram:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 51224/2021

**DATE OF HEARING: 04.03.2021
DATE OF DECISION: 07.04.2021**

ANIL CHOUDHARY:

The issue in this appeal is whether the show cause notice was validly served on the appellant which is a condition precedent for giving jurisdiction to the Adjudicating Authority to pass an order.

2. The case of the appellant is that he is neither an importer nor engaged in the business of import and export. Further, he does not have any Import Export Code (IEC). Brief facts of the case are that Revenue seized post parcels bearing Nos.

- (i) EMS No. EA122469270 CN;
- (ii) EA122469411 CN; and
- (iii) EA 122469345 CN

imported from China not bearing the name of consignor, at foreign post office, New Delhi. The parcels were addressed to Shri Baldeep Singh, D-164, Punjabi Basti, Baljeet Nagar, New Delhi - 110008. The parcels were examined by the officers of DRI under panchnama. The goods were declared as CD and/or module whereas the goods were actually found as follows:-

Sr. No. (1)	Date of examination	Speed post parcel No.	Description of goods found (3)	Quantity found (4)
1	21.01.2016	EA122469270 CN	SFP Transceiver Module (Fibre Optic LC Connector)	1095
		EA122469345 CN	Window Server 2012 Standard	7
			Microsoft Corporation, Win Pro 8.1 x 64 Eng Inti pk DSP OEL DVD	218
2	27.01.2016	EA122469345 CN	SFP Transceiver Module (Fibre Optic LC Connector)	520

As the goods were liable for confiscation, the same were seized. Summons were issued in the name of the appellant dated 11.02.2016, 02.03.2016 and 15.03.2016. Thereafter, nobody appears before the DRI. An officer personally visited the premises at D-164, Punjabi Basti, Baljeet Nagar, New Delhi-110008, but the person - Shri Baljeet Singh was not found. Thereafter, without ascertaining or identifying the main person - Shri Baljeet Singh, show cause notice dated 20.07.2016 was issued by speed post and also marked to notice board of DRI, DZU, Lodhi Road, New Delhi-110003

and copy also marked to the notice board of Assistant Commissioner of Customs, FPO, Indraprastha Extension, New Delhi.

3. The case of the appellant is that the aforementioned show cause notice nor any communication like summons or notice, nothing was served on him. Thus, the ex-parte order-in-original No. RD/ADC/AC/92 /2017 dated 06.12.2017 is wholly without jurisdiction and a nullity. The case of the appellant is, neither he is the importer nor have claimed the goods seized by the Revenue. Further, there is no record that the appellant have been indulging in any such import(s) amounting to smuggling.

4. The first appeal filed by the appellant before the Commissioner (Appeals) was rejected. Being aggrieved, the appellant is before this Tribunal.

5. During the course of hearing, this Tribunal noticed that there appears to be no proper service of show cause notice, and accordingly by Miscellaneous Order dated 18.01.2021 directed the learned Authorised Representatives to file a copy of show cause notice as well as proof of service of show cause notice, in view of the fact that the appellant have denied the service of show cause notice. In reply thereto, learned Authorised Representative on 04.03.2021 have only furnished the number of speed post and date of despatch, but have failed to submit the proof of delivery. He also filed the copy of show cause notice and the copy of notice of personal hearing issued on 19.06.2012, but there is no proof of service.

6. Learned Authorised Representative for the Revenue submitted the copy of report from the foreign post office, New Delhi wherein he stated that there is no record of regular imports by this appellant and a similar report dated 10.02.2021 have been received from the Deputy Commissioner (EDI), ACC Export. Ld. AR further submitted that the address given by the appellant in the memo of appeal is same on which the show cause notice etc. was issued through speed post, and accordingly states that there is sufficient service of show cause notice.

7. Learned Counsel for the appellant reiterates his submission and states that Revenue have resorted to colourable exercise of power, as it has passed the ex-parte order-in-original without ensuring service of show cause notice. In spite of there being no change of address of the appellant, which has been all throughout for the last several years till today at D-164, Punjabi Basti, Baljeet Nagar, New Delhi-110008. Even as per the statement of Revenue they could locate the appellant even on personal visit to the said premises. Further, without identifying and ascertaining the service of notice, by putting on the notice board is colourable exercise of powers, having no legal sanctity. Accordingly, he prays for allowing the appeal with consequential benefits.

8. Having considered the rival contentions, I find that Section 153 of the Customs Act requires summons, notice, orders etc. may be served:-

Section 153(1), the Adjudicating Authority have proceeded to pass the ex-parte adjudication order. For passing a valid adjudication order, valid service of show cause notice is essential.

10. Accordingly, I hold that there is no valid service of show cause notice. Thus, the order-in-original is held without authority of law. Therefore, the impugned order is set aside and appeal is allowed with consequential benefits, in accordance with law.

(Pronounced on 07.04.2021).

(Anil Choudhary)
Member (Judicial)