**R.D. Exports Vs. Cc (General)**

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**SooperKanoon Citation** : sooperkanoon.com/29426

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-22-2002

**Reported in** : (2003)(86)ECC650

**Judge** : P Chacko

**Appellant** : R.D. Exports

**Respondent** : Cc (General)

**Judgement** :

1. Having examined the records and heard both sides, I find, the appeal itself requires to be finally disposed of at this stage. Accordingly, I allow the present application and proceed to deal with the matter. The appellants are in the second round of litigation before the Tribunal on the same set of facts. In the earlier round, the challenge before the Tribunal was against an order dated 2.3.2001 passed by the Commissioner of Customs (General), New Customs House, New Delhi in adjudication of a show-cause notice dated 22.2.2001. That was a show-cause notice issued under Section 124 of the Customs Act proposing to extend by six months the statutory period for issuance of show-cause notice under Section 110(2) of the Act for confiscating certain goods etc. The Commissioner, in adjudication of that show-cause notice, decided to extend the period by six months from 7.3.2001. But that order of the Commissioner was found to be violative of the principles of natural justice and accordingly, this Tribunal, in the earlier round of litigation, set aside that order and remanded the matter to the Commissioner to adjudicate the show-cause notice dated 22.2.2001 in accordance with the

principles of natural justice. In the remand order dated 4.10.2001, it was made clear that the Commissioner would be at liberty to issue a corrigendum to the show-cause notice if deemed necessary. The order impugned in the instant appeal was passed by the Commissioner on 22.7.2002 in pursuance of the remand order.

3. Ld. Counsel for the appellants has given a chronology of events to show that the Commissioner of Customs has again violated the principles of natural justice. On 22.6.2002, the Dy. Commissioner of Customs (Preventive) in the office of the Addl. Commissioner of Customs. IGI Airport, New Delhi issued a corrigendum to the show-cause notice dated 22.2.2001, which, as already noted, had been issued by the Commissioner of Customs (General), New Customs House, New Delhi. This corrigendum had the limited purpose of amending the date and time of personal hearing. On 10.7.2002, the appellants sent by registered post a representation dated 8.7.2002, seeking adjournment of the hearing on 16.7.2002. Further, on 11.7.2002, they personally submitted a copy of the same representation to the office of the Commissioner of Customs (General) and obtained acknowledgment of receipt thereof. In this representation, it was suggested that the Counsel for the appellants could be heard on 17.7.2002. On 17.7.2002, the Air Customs Superintendent (Adj.) issued a notice to the appellants stating that personal hearing in the matter would be held on 30.7.2002. This notice was received by the party on 20.7.2002. Surprisingly, the Commissioner took up the matter for final disposal on 22.7.2002 without waiting for the date of personal hearing fixed by himself. Accordingly, the impugned order was passed on 22.7.2002 against the appellants ex parte.

These facts are not in dispute before me. Gross violation of natural justice is writ large on these facts.

4. The impugned order is set aside and the present appeal is allowed by way of remand. The Commissioner of Customs is directed to pass a fresh speaking order in the matter after affording the appellants a reasonable opportunity of being heard.

5. At this stage, Ld. Counsel prays that a specific direction be given to the Commissioner to provide the appellants copies of all the documents relied upon In

the show-cause notice dated 22.2.2001. This prayer is strongly opposed by the DR, who submits that this question has already been covered by the earlier remand order. There appears to be some force in the submissions of the DR Inasmuch as, at the time of passing of the remand order by this Bench after hearing the appellant's counsel, a prayer of this kind was not addressed and no specific direction was incorporated in the remand order for supply of any documents to the party at the de novo adjudication stage. In this context, however, It will be pertinent to note that both the orders passed by the Commissioner in adjudication of the same show-cause notice have been found to be In violation of principles of natural justice. The prospect of multiplicity of proceedings requires to be borne in mind so that the party should not be left to be litigating the matter before the Tribunal on the repeated ground of natural justice.

In this view of the matter, I think it will meet the ends of justice if the Commissioner is directed to supply copies of all the documents relied upon in the show-cause notice and listed In the appellant's representation dated 8.7.2002, notwithstanding the point raised by the DR. It is directed accordingly.