

**Rajesh Kumar Vs. Commissioner of Customs**

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

**Decided On :** Oct-30-2003

**Reported in :** (2004)(165)ELT315TriDel

**Judge :** P Chacko

**Appellant :** Rajesh Kumar

**Respondent :** Commissioner of Customs

**Judgement :**

1. Having examined the records and heard both the sides, I am of the view that the appeals require to be finally disposed of at this stage.

Accordingly, I allow the present applications and proceed to deal with the appeals.

2. The appeals are against imposition, by the Commissioner of Customs, of penalties on the appellants under Section 112 of the Customs Act as per Order-in-Original No. 19/2003, dated 31-3-2003. The impugned order was passed in adjudication of a show cause notice issued to these appellants & others on 4-12-2002. The show cause notice was sent at the village address of the appellants despite the fact that the appellants were at that time in jail in connection with criminal cases launched against them by the customs authorities. No copy of the show cause notice was even attempted to be served on any of these appellants in jail even though their being in jail was a fact well known to the customs authorities. One of the main grounds raised in these appeals is that a reasonable opportunity

of defence was not given to them. Even any notice of hearing in the adjudication proceedings was not served on the appellants. The impugned order does not contain anything to suggest that the show cause notice or any hearing notice was duly served on the appellants in terms of Section 153 of the Customs Act. It is submitted by the counsel for the appellants that the appellants are still in jail. This submission is not contested. I am of the view that, as long as the noticees/the accused are in jail in connection with cases being prosecuted by the customs authorities, it is the bounden duty of the department to ensure under Section 153 ibid that any notice or order addressed to them is duly served on them through the Jail Superintendent. Admittedly, this has not been done in this case.

Therefore, the plea of violation of natural justice raised today by the Counsel, though not in the memoranda of appeals, cannot be rejected. I accept this plea and set aside the impugned order insofar as it relates to these appellants. The Commissioner of Customs shall re-adjudicate the case relating to these appellants in accordance with law and the principles of natural justice, having regard to the relevant observations contained hereinbefore. The appeals stand allowed by way of remand.

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