

**Collector of Customs Vs. Pushpa Electronics**

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

**Decided On :** Jun-20-1990

**Reported in :** (1990)(49)ELT601TriDel

**Appellant :** Collector of Customs

**Respondent :** Pushpa Electronics

**Judgement :**

1. This is a stay application filed by the department with reference to the order of the learned Collector of Customs, Kanpur. After preliminary submissions the learned SDR stated that he would not press the stay if the case is taken up today.
2. In the above circumstances the stay application is dismissed as not pressed and the main case is taken up for hearing with the consent of both the sides.
3. The learned SDR stated that the Kanpur Customs Officers recovered electronic goods of foreign origin from the business premises of the appellant and seized them as the respondent could not produce evidence of legal importation and acquisition, etc.
4. A show cause notice was issued on 9-7-1987. Attempts were made to serve the show cause notice personally but the respondent refused to receive the same. Hence the show cause notice was pasted at the door of a shop in the presence of two independent witnesses on 11-7-1987.

5. A copy of the notice was also pasted on the notice board of the Collectorate on 11-7-1987 as provided under Section 153(b) of CA 62.

The respondents in their defence reply dated 5-8-1987 admitted the service of show cause notice by pasting on the door of the shop on 11-7-1987.

6. The personal hearing was also attended by the respondent on 11-2-1988.

8. The learned Assistant Collector after duly observing the principles of natural justice and the prescribed procedure, confiscated some of the goods and released others and imposed a penalty.

9. The respondents thereupon preferred an appeal before the Collector (Appeals), New Delhi. The learned Collector (Appeals) allowed the appeal holding that (1) various items seized were not all covered under the notification issued under Section 11(b); (2) service of the show-cause notice has been manipulated by the department and (3) the service was not in accordance with the provisions of law.

10. It was their contention that the learned Collector (Appeals) has erred in as much as the respondent had not agitated the point of service of show-cause notice before the adjudicating authority and had submitted the reply and attended the personal hearing.

11. Further the respondents had not produced any evidence in support of their allegations that the department had manipulated the service of show cause notice.

12. It was also their contention that the learned Collector (Appeals) has erred in holding that the manner of the service of show cause notice was not in accordance with the prescribed procedure.

13. It was their contention that show cause notice was properly served as per the provisions of Section 153(b) of the Customs Act.

14. It was also their submission that the observations of the Collector of Customs regarding the goods and the notification under Section 11(b) were vague.

15. It was their contention that in respect of the goods to which Section 123 and Chapter 4 apply, the burden of proof lies with the respondent.

16. In view of the above position, it is prayed that the order of the Collector (Appeals) may be set aside and the order of the Assistant Collector may be restored.

17. The learned representative for the respondents stated that the show cause notice was not properly served.

18. It was their contention that they had raised this point before the adjudicating authority below. In any eventuality it was a legal point and may be raised at any stage.

19. It was their contention that their shop was opened on 11-7-1987 and they never refused to receive any notice from any official. As a matter of fact no one came to their shop to personally deliver the notice and the entire matter was manipulated. In this connection he would like to draw attention to the document of Shri Mahesh Chandra Gupta one of the alleged witnesses enclosed at Annexure A to their cross-objection. In this document, Shri Mahesh Chandra Gupta has stated that neither Shri R.P. Verma, Inspector, Customs, Kanpur nor any other official had visited the shop or pasted any notice on 11-7-1988 at the door of Pushpa Electronics. He has further stated that Shri Verma had simply orally told him about this matter and believing him he had signed on the document in the shop of 'Time and Town'.

20. It was also their contention that provisions of Section 153 have not been duly observed. It was also their submission that in view of the language of Section 153 pasting on the notice board or pasting on the shop door was of no relevance and does not amount to sufficient compliance with law.

21. It was also their contention that the department has not shown that the goods in question were notified goods or covered by Section 123 and that the burden of proof was on them. It was their submission that the department has not discharged its burden in terms of the law. He therefore prays that the order of the Collector

(Appeals) may be upheld.22. I find that the learned SDR is correct in pointing out that the show cause notice had been pasted on the shop of the appellant in the presence of two independent witnesses as apparent from the attested copy of the document evidencing pasting in the presence of two witnesses on 11-7-1987. The learned SDR is also correct in pointing out that the show-cause notice was also pasted on the notice board of the Central Excise Collectorate on 11-7-1987 as apparent from the documents evidencing such pasting (the attested photo copy of which is at page 41).

23. There is nothing to show that these actions were manipulated or malafide. The written submission of one of the witnesses to the pasting of the notice on the shop, Shri Mahesh Chandra Gupta produced by the respondent is not sufficient to prove malafides as there were two witnesses and not merely one and the other witness has not stated anything. In any eventuality even this document signed by Shri Mahesh Chandra Gupta only goes to show that the Customs Officers had in any case visited the area on 11-7-1988 and if they had gone there was no reason to presume or believe that they did not make an attempt to serve the notice on the appellant and did not paste the same as indicated in the pasting certificate.

24. Further the department had also taken the precaution of pasting on the Central Excise Collectorate Notice Board as evident from the pasting certificate.

25. The attention of the Bench has been drawn by both the sides to Section 153 of the Customs Act regarding service of the orders of notice, etc. In this connection I observe that Section 153(a) provides for service by tendering the notice, etc. Therefore if the department, in view of the shortage of time, decided to tender the notice personally it was only acting within the ambit of Section 153(a) and therefore the attempt to tender personally was legal and proper and since the official found the shop closed, he pasted it on the shop in the presence of two witnesses and this action does not amount to an illegal or improper action and could be only said to be one of the courses open in the circumstances and cannot be faulted.

26. Furthermore since the notice could not be tendered personally to the respondent, as an abundant caution, the department had pasted a copy of the

same on the notice board of the Collectorate and this was justified in the above circumstances and amounted to proper service in terms of Section 153(b) which allow service by affixing on the notice board of the Custom House to which the Collectorate are responsible.

27. In view of the above factual and legal position I hold that the notice was duly served on the appellant.

28. As such I hold that the learned Collector (Appeals) has erred in this respect. As regards the merits of the case I find that it has not been properly examined in as much as the show cause notice refers to Section 123 as well as various sections of Chapter IV but the learned Collector (Appeals) has merely made his observations with reference to Section 11(B). Further the order of the Collector (Appeals) is rather vague. Therefore I set aside the impugned order in appeal and remand the matter to the learned Additional Collector (Appeals) with the direction that he should reconsider the matter on merits and pass a speaking order.

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