

Chellapan Vs. Additional Collector of Customs

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Court : Kerala

Decided On : Oct-15-1975

Reported in : 1978(2)ELT547(Ker)

Judge : Govindan Nair, C.J. and T. Kochu Thommen, J.

Acts : [Customs Act, 1962](#) - Sections 153

Appeal No. : W.A. No. 243 of 1975

Appellant : Chellapan

Respondent : Additional Collector of Customs

Disposition : Appeal dismissed

Judgement :

Govindan Nair, C.J.

1. The short question arising in this appeal turns on the interpretation of Section 153 of the [Customs Act, 1962](#) which is in these terms :-

'153. Any order or decision passed or any summons OF notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice registered post to the persons for whom it is intended or to his agent; or

(b) if the order, decision, is on the notice board of the customs house'

The learned Judge dealt with the contention in the following manner in the judgment under appeal.

'What is contended for by the petitioner is that before the Department could have taken recourse to Sub-Clause (b) of Section 153 they should have tried to serve the order in both manners contemplated by sub-clause (a). Shri N.N. Divakaran Pillai, the petitioner's counsel contends that if it was not possible to serve the petitioner by sending the order by registered post, he should have been served by tendering it directly. I do not agree with this contention. If the order or decision passed by the Customs Authorities could not be served in one of the modes as prescribed on sub-clause (a) then the Authorities could certainly have recourse to sub-clause (b). Moreover, if the petitioner was evading service of the order sent by registered post, it would have been impossible to tender the order to him directly. In the circumstances, there is nothing illegal in the action taken by the Customs Authorities concerned.'

We only wish to add that the modes provided in section 153(a) are alternative methods by which attempts can be made to serve an order or decision passed or any summons or notice issued under the Act. Whether it should be tendered or sent by registered post or should be served on the agent would depend upon the feasibility of effecting service by one of the methods. It is normal to send such notice by registered post. That method was attempted but failed. In such circumstances Section 153(b) of the [Customs Act, 1962](#), could be brought into effect. That is what has been done.

2. Counsel for the appellant relied on two rulings of Allahabad High Court in *C. Maharaj and Sons v. Sales Tax Officer, IV Agra and Ors.* - (1964) 15 S.T.C. 879 and *Gopal Das Uttam Chand v. Sales Tax Officer Dehra Dun* - (1970) 25 S.T.C. 229 interpreting Rule 77 of the U.P. Sales Tax Rules, 1948 in support of his contention that all the modes under Section 153(a) should be exhausted before Section 153(b) is resorted to. The rule interpreted in those decisions is differently worded. We do not think that the decisions are helpful in understanding Section 153 which we have to interpret in this case. The wording used in the rule

interpreted in those decisions was 'if none of the methods indicated is available' service may be effected by affixture There is no such provision in Section 153(b) of the Customs Act. We think the methods indicated in Section 153(a) are alternative methods any one of which could be attempted in the first instance. The different modes of service provided by the rule also support the view ; either tendering to the person (apparently when it is feasible) or attempting to serve on his agent (apparently when one is available) or by sending by registered post. To say that an attempt to tender notice must be made in cases where it is not feasible or even possible or that an attempt should be made to serve on an agent when there is no agent or none is known to exist would be to make the section unworkable.

3. We see no reason to interfere. We dismiss this appeal but direct the parties to bear their respective costs.

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