

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40363 of 2021

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 115/2021 dated 11.03.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri Thirumalai Thiyagarajan

64/23, Jeevarathinam Salai,
Tondiarpet, Chennai – 600 081

: Appellant

VERSUS

The Commissioner of Customs

Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

: Respondent

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant

Shri R. Rajaraman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40267 / 2022

DATE OF HEARING: 27.06.2022

DATE OF DECISION: **30.06.2022**

Order :

The only issue to be decided in this appeal is:
whether the levy of penalties under Section 112(a) and
Section 114AA of the Customs Act, 1962 on the appellant,
as upheld by the First Appellate Authority, is justified?

2.1 Heard Shri N. Viswanathan, Learned Advocate for
the appellant, who, at the outset, would submit that both
the lower authorities have passed their respective orders
without following the procedure laid down under the
statute as well as the principles of natural justice,
inasmuch as the Adjudicating Authority passed the Order-

in-Original without following the procedure laid down under the Customs Act, which order, having been upheld by the First Appellate Authority, cannot be sustained. He would consequently request for an opportunity to go back before the Adjudicating Authority for fresh adjudication.

2.2 It is his case that after issuing the Show Cause Notice dated 22.09.2017, only one hearing took place on 13.12.2017, on which date this appellant could not participate as he did not receive the notice of personal hearing, which the Adjudicating Authority herself admits to having been returned undelivered; and that without affording any further opportunities, the Adjudicating Authority has concluded the adjudication vide Order-in-Original No. 62521/2018 dated 29.03.2018, which was apparently despatched on 02.04.2019. He would also contend that this ground was urged before the First Appellate Authority, but there is neither discussion nor any finding on this, given by the First Appellate Authority.

3. *Per contra*, Shri R. Rajaraman, Learned Assistant Commissioner for the Revenue, supported the findings of the lower authorities. He would also contend that sufficient opportunities were given, but the appellant had chosen not to participate in either the adjudication proceedings before the Adjudicating Authority or the appellate proceedings before the First Appellate Authority.

4. I have considered the rival contentions on the limited aspect of whether the opportunity provided by the authorities below to the appellant was sufficient in terms of the procedure laid down under the Customs Act.

5. I agree with the contentions of the Learned Advocate for the appellant that the Adjudicating Authority did not give any personal hearing after recording that the notice issued to this appellant had returned unserved. Further, even though the First Appellate Authority has recorded, at paragraph 3 (c) of the impugned Order-in-Appeal, the specific contentions as to the non-following of the

procedure contemplated under Section 153 of the Customs Act read with Section 122A *ibid.* by the Adjudicating Authority, but however, there is no discussion or finding recorded on this aspect anywhere by the First Appellate Authority in the impugned order.

6. The Act prescribes the procedure to be followed before passing an adjudication order, which has to be strictly adhered to and there is no shortcut. Hence, the notice issued to the appellant in this case on hand, which was returned unserved, is as good as no notice, in the absence of following the procedure laid down under Section 153 *ibid.* The First Appellate Authority having recorded this specific ground urged by the appellant, has ignored the same, which is not in accordance with law.

7. In view of the above, the Order-in-Original suffers from infirmity of not following the procedure laid down under the statute and hence, the same is held to be unsustainable. Consequently, the impugned Order-in-Appeal which has upheld the above Order-in-Original cannot also be sustained for the very same reason. Hence, the impugned order is set aside and the matter is restored to the file of the Adjudicating Authority for passing a *de novo* adjudication order in accordance with law and it goes without saying that sufficient and reasonable opportunities shall be provided to the appellant, as prescribed under the statute. The Adjudicating Authority shall thereafter pass a *de novo* adjudication order after considering the plea and the documents / case-law, if any, that may be filed during the course of adjudication proceedings. Though arguments were presented on merits, but however, since the matter is sent back to the file of the Adjudicating Authority for fresh disposal on merits and after considering the arguments and documents, if any, that may be filed by the appellant, no order is being passed on merits since the same may prejudice the mind of the Adjudicating Authority.

8. The appeal is treated as allowed by way of remand,
on the above terms.

(Order pronounced in the open court on **30.06.2022**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd