

(2012) 11 MAD CK 0178

Madras High Court

Case No: Writ Petition No. 27313 of 2012 and M.P. No's. 1 and 2 of 2012

ETA General P. Ltd.

APPELLANT

Vs

Commissioner of Customs and
Another

RESPONDENT

Date of Decision: Nov. 9, 2012

Acts Referred:

- Customs Act, 1962 - Section 111(d), 111(o), 112(a), 125, 153

Citation: (2013) 291 ELT 27 : (2013) 18 GSTR 26

Hon'ble Judges: R. Sudhakar, J

Bench: Single Bench

Advocate: Joseph Prabakar, for the Appellant; K. Mohanamurali, for the Respondent

Final Decision: Dismissed

Judgement

R. Sudhakar, J.

This writ petition has been filed challenging Order-in-Original No. 18452/2012, dated March 7, 2012. At the first instance, the Assistant Commissioner of Customs made a demand of Rs. 4,91,000 in respect of three bills of entry with interest on failure to produce the B-15 registration certificate issued to the supplier of the goods, namely, switches which were cleared provisionally. Aggrieved by the order, the petitioner preferred an appeal to the Commissioner of Customs (Appeals), Chennai and the Commissioner of Customs (Appeals), Chennai after hearing the appeal, set aside the order and remanded the matter back to the original authorities for de novo enquiry. The Assistant Commissioner of Customs, Group 5A, on remand initiated the proceedings de novo and issued notices on various dates calling upon the petitioner to appear for personal hearing. It is recorded in the order under challenge that the petitioner failed to appear on the dates mentioned and therefore the authority had no other option except to proceed further.

2. Paragraph 4 of the impugned order, which is relevant, reads as follows:

4. The case has been taken up for de novo proceedings. It is pertinent to mention that the importer, M/s. ETA General Pvt. Ltd., 688, Anna Salai, Chennai-600 006 were granted personal hearings on March 22, 2011, April 12, 2011, November 8, 2011, February 13, 2012, February 15, 2012 and February 17, 2012. They failed to appear on all the days mentioned above in spite of clearly informing that the matter would be decided ex parte.

3. Since there is no response from the petitioner, the authority came to hold that the importer is trying to delay the matter and failed to co-operate in conducting the matter. Hence, he proceeded to pass orders on merits. In the result, the authority passed an order of confiscation of the goods u/s 111(d) and 111(o) of the Customs Act, 1962 and penalty u/s 112(a) of the Customs Act, 1962. The following order came to be passed:

(i) I confiscate the goods u/s 111(d) and 111(o) of the Customs Act, 1962.

(ii) However, I give option to redeem the goods upon payment of fine of Rs. 3,00,000 (rupees three lakhs only) u/s 125 of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 1,50,000 (rupees one lakh fifty thousand only) on the importer u/s 112(a) of the Customs Act, 1962.

(iv) I order closure of test bonds executed by the importer in the above lines.

The said order is under challenge in the present writ petition.

4. The learned counsel for the petitioner primarily challenges the order on the ground that no notice of personal hearing was served on the petitioner and therefore, there was a denial of opportunity. Consequently, violation of principles of natural justice is pleaded. The order dated March 7, 2012 was despatched on March 7/8, 2012 and the same was not served on the petitioner and therefore great prejudice and hardship is caused.

5. It is also the plea of the learned counsel for the petitioner that the impugned order came to be served on a non-existent address and besides it was not served on the proper person. Therefore, it is not a service in accordance with section 153 of the Customs Act and hence, this court should set aside the proceedings. To support this plea, the learned counsel for the petitioner relies upon the Customs Department document page No. 1, in F. No. TA/108003, 108032, 108066 and S. Misc. 1031/2008, dated June 25, 2009 and document page No. 2 in F. No. TA/108032/-IAD-CRA, dated November 25, 2009 to prove that the address shown in those documents is as follows:

6. The learned counsel for the petitioner also relies upon the order passed by the Deputy Commissioner of Customs (Group 5A), dated March 19, 2010 in respect of F. No. TA/memo No: 108032/LAD-CRA-GRSA, Order-in-Original No. 11406/2010 to state that the address for communication of that order was as follows:

M/s. ETA General Private Ltd.,
New No. 71, Old No. 63,
Sterling Road, 3rd Floor,
Nungambakkam,
Chennai 600 034.

But in the present case, the impugned order has been sent and despatched to the wrong address, namely,

M/s. ETA General Pvt. Ltd.,
Seethakathi Chambers,
5th Floor, 688, Anna Salai,
Chennai 600 006.

There is no building in the said address as the building has been demolished in the year 2009 itself and the company is not functioning in that address since then. Therefore, there is no proper and effective service.

7. The learned counsel for the respondents produced the original file to repel the above plea and contended as follows:

Order-in-Original No. 7688/2008-Group 5B passed by the Assistant Commissioner of Customs, (Group 5B and C) was based on the petitioner's address of M/s. ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600 006, which is as per record. The appeal also was filed before the Commissioner of Customs (Appeals), Chennai, on August 14, 2008 showing the address as M/s. ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600006. Column No. 5, which deals with notice to be sent to the appellant, also contains the address as ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600006. The order-in-appeal came to be passed in Customs No. 62/10 on January 6, 2010 and it was despatched on January 8, 2010. A copy of the order of the appellate authority was received by the Assistant Commissioner of Customs (Group 5B) on January 11, 2010 as it is a case of remand.

8. As is evident from the original file, the order of the Commissioner of Customs (Appeals) is marked to the petitioner showing his address as ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600006. The petitioner does not dispute the receipt of the Appellate Commissioner's order. On remand, the Assistant Commissioner took up the de novo proceedings and notices were issued from time to time as is extracted earlier and the final order was passed. From the original file, it is seen that the order passed by the Assistant Commissioner of Customs (Group 5B) and the order of remand were passed on March 7, 2012 and despatched on March 8, 2012 by speed post acknowledgment due. That letter was addressed to ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600 006. Therefore, the communication was sent only to the address as it has been referred to by the petitioner in the original proceedings as well as in

the appeal memorandum. Therefore, the plea of non-service of notice or the impugned order to correct address is a fallacy.

9. Having considered the rival submissions, this court is not inclined to accept the plea of violation of principles of natural justice or violation of section 153 of the Customs Act.

(1) Section 153 of the Customs Act reads as follows:

153. Service of order, decision, etc.--Any order or decision passed or any summons or notice issued under this Act, shall be served,

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

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

10. In this case, the address, which was shown in the impugned proceedings, viz., ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600006 is the same address as is reflected in the order of remand passed by the Commissioner of Customs (Appeals) and all other earlier proceedings. It is also the address stated by the petitioner in the appeal filed by the petitioner before the Commissioner of Customs (Appeals). There is no intimation by the petitioner about the change of address thereafter. The Department Cannot send the order to any other address except the one as per record. That will amount to improper service.

11. In such view of the matter, the Department is bound to send notice only to the address as per the record and they are not entitled to change the address. The Department cannot unilaterally change the address unless there is a specific request from the party that their address has been changed. Therefore, service on the address shown as per the record is a service of the order in terms of section 153 of the Customs Act. No other method is permissible. The Department has shown by the original file to show despatch on March 8, 2012 by speed post acknowledgment due. Therefore, the service is in order. This court is not inclined to accept the plea of the petitioner that there was no proper service.

12. The next ground is the allegation of violation of principles of natural justice stating that no personal hearing was granted. Paragraph 4 of the impugned order clearly gives the various dates on which the notice of personal hearing was granted and the petitioner failed to appear. The notices are also part of the record. The notices clearly show the address as ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600 006. Therefore, the respondents have sent the notices to the correct address as per the records and they cannot be faulted. Failure to appear in response to the notice is the peril of the petitioner, and consequences follow.

13. One other aspect which has to be considered against the petitioner and in favour of the Department is that, assuming without admitting that the Department knew the other address of the petitioner in other proceedings, it is of no consequence. The Department will deal with each file separately.

14. The fact remains that the Commissioner of Customs (Appeals) order dated January 6, 2010 was despatched on January 8, 2010 to the very same address, namely, ETA General Pvt. Ltd., Seethakathi Chambers, 5th Floor, 688, Anna Salai, Chennai 600 006 and the petitioner does not deny receiving of the same. If the petitioner plea is that there was no building at all on that date, as to how the petitioner received the appellate authority's order is a question has to be answered by the appellant/petitioner and not by the respondents. This falsifies petitioner's plea of no service.

15. The further plea of the learned counsel for the petitioner is that he received one copy and filed the writ petition. If that is the case, it is incumbent on the counsel to have verified the address when he received the appellate authority's order and intimated it to the authorities in the de novo proceedings so as to change the address. The counsel states that he had intimated so. But no proof has been shown or filed to support it. Therefore, the said plea is also rejected. Hence, considering all these aspects, this court opines that the petitioner is not diligently prosecuting the matter. Since there is lack of bona fides, the petitioner is not entitled to any relief and accordingly, the writ petition is dismissed. Consequently, the connected miscellaneous petitions are also dismissed. No costs.