

**IN THE HIGH COURT OF BOMBAY**

**Writ Petition No. 12445 Of 2018**

**M/s CAMRON INTERNATIONAL  
THROUGH ITS PARTNER**

**Vs**

**UNION OF INDIA AND ORS**

**M S Sanklecha & M S Sonak, JJ**

**Dated: July 10, 2019**

**Appellant Rep by: Ms Shilpa Balani i/b Mr Devraj Kansara**

**Respondent Rep by: Mr Ram Ochani**

**Cus - The petition challenges the order dated 23rd July 2018/24th July 2018 which confirmed a SCN issued under Customs Act, 1962 - The basis of the challenge is that the impugned order has been passed in breach of principles of natural justice - It is the case of the petitioner that it came to know about the impugned order only when the order was received by Partner of the Firm imposing penalty upon him, in the month of August 2018 - Undisputedly the Revenue is unable to show that the SCN was served upon the parties or attempted to be served the parties by sending it by registered post or by courier - In absence of Revenue being able to establish the same, the invocation subsection (b) of Section 153(1) of the Act is not permissible - Thus, no satisfactory service of SCN under the Act is shown by the revenue - It is the petitioner's case that no notice of personal hearing was received by them before passing of the impugned order - The Revenue has been unable to establish that any notice of personal hearing was served upon the petitioner under erstwhile Section 153 or under the new Section 153 of the Act - It is clear that the impugned order has been passed in breach of elementary principle of natural justice leading to a flaw in the decision making process - In such circumstances, court would not relegate the petitioner to alternate remedy of filing an appeal, as passing of impugned order without service of SCN does cause prejudice to the petitioner - Therefore, the impugned order is set aside: HC**

**Petition allowed**

**JUDGEMENT**

- 1. This petition under Article 226 of the Constitution of India challenges the order dated 23rd July 2018/24th July 2018 passed by the Commissioner of Customs, Nhava Sheva which confirmed a Show Cause Notice dated 9th February 2017 issued under the Customs Act, 1962 (Act).**
- 2. The basis of the challenge is that the impugned order dated 23rd July 2018/24th July 2018 has been passed in breach of principles of natural justice inasmuch as without the Show Cause Notice or any notice granting a**

personal hearing being served upon the petitioner. It is the case of the petitioner that it came to know about the impugned order only when the order was received by the Partner of the Firm imposing penalty of Rs.10,000/upon him, in the month of August 2018. It is in the aforesaid circumstances, the petitioner submits that this Court should exercise its extraordinary writ jurisdiction and not relegate the petitioner to the alternate remedy of filing an appeal under the Act as the impugned order is in breach of principles of natural justice.

3. As against the above, Mr. Ochani, learned counsel appearing for the Revenue, submits that the Show Cause Notice dated 9th February 2017 was duly served upon the petitioner, by virtue of the fact that under the erstwhile Section 153(1)(b) of the Act, the Show Cause Notice had been affixed on the notice board of the Customs House. It is therefore, submitted that the notice was duly served upon the petitioner and thus the order cannot be said to be in breach of principles of natural justice.

4. However, the additional affidavit dated 24th June 2019 filed by the Dy. Commissioner of Customs, wherein he fairly states that the original file with regard to the petitioner is not traceable. Consequently, the necessary evidence of the Show Cause Notice being served by registered post and/or speed post upon the petitioner is not available. Moreover, no sufficient evidence of service of any notice of personal hearing being issued/served upon the petitioner is produced. The file numbers given in the affidavit (Exhibit' A') dated 28 November 2018 does not tally with the file number indicated in the impugned order.

5. Section 153 of the Customs Act, 1962 at the relevant time read as under:-

*"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 or by such courier as may be approved by the {Principal Commissioner of Customs or Commissioner of Customs}]*

*(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."*

6. From the above, it is evident that before subsection (b) of Section 153B of the Act could be invoked, the authorities must establish that the show cause notice could not be served upon the party by the modes specified in subsection (a) of Section 153B of the Act. Thus, invoking subsection (b) by affixing it on the notice board of Customs House can only be done on failure of the mode of service provided in Section 153(1)(a) of the Act.

7. In this case, undisputedly the Revenue is unable to show that the Show Cause Notice dated 9th February 2017 was served upon the parties or attempted to be served the parties by sending it by registered post or by courier (as approved by the Commissioner of Customs). In absence of the

**Revenue being able to establish the same, the invocation subsection (b) of Section 153(1) of the Act is not permissible. Thus, no satisfactory service of Show Cause Notice under the Act is shown by the respondent.**

**8. It may also be pointed out that it is the petitioner's case that no notice of personal hearing was received by the petitioner before passing of the impugned order. The Revenue has been unable to establish that any notice of personal hearing was served upon the petitioner under erstwhile Section 153 or under the new Section 153 of the Act.**

**9. In the above view, it is clear that the impugned order has been passed in breach of elementary principle of natural justice leading to a flaw in the decision making process. In such circumstances, we would not relegate the petitioner to the alternate remedy of filing an appeal, as passing of the impugned order without service of show cause notice does cause prejudice to the petitioner. Therefore, we set aside the impugned order dated 23rd July 2018/24th July 2018 of the Commissioner of Customs and restore the Show Cause Notice dated 9th February 2017 to him for fresh adjudication.**

**10. Needless to state that further proceeding against the petitioner would only be taken after service of the Show Cause Notice enabling the petitioner to file a reply and thereafter granting the petitioner personal hearing before disposal of the Show Cause Notice.**

**11. Accordingly, Petition is allowed in the above terms.**