



(929)-WPL-3933-20.doc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3933 OF 2020

SYSKA LED Lights Pvt. Ltd.

..Petitioner

Versus

Union of India & Ors.

..Respondents

Mr. Prithviraj Choudhari i/by Vaish Associates Advocates, for the
Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate a/w Mr. J. B. Mishra, Advocate for
the Respondents

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

**ORDER RESERVED ON : 02.02.2021
ORDER PRONOUNCED ON : 25.03.2021**

P.C.

Heard Mr. Prithviraj Choudhari, learned counsel for the
petitioner and Mr. Pradeep S. Jetly, learned senior counsel for the
respondents.

2. By filing this petition under Article 226 of the Constitution of
India, petitioner seeks quashing of order dated 23.09.2020 passed by the
Joint Commissioner of Customs, Gr. VA, Nhava Sheva-V i.e., respondent
No.3 and further seeks a direction to the respondents to release the
imported goods of the petitioner covered by Bill of Entry No.8311310
dated 28.07.2020.

BGP

1 of 19

<https://itatonline.org>



(929)-WPL-3933-20.doc.

3. Case of the petitioner is that it is a private limited company registered under the Companies Act, 1956 and primarily engaged in the business of import and manufacture of light products.

4. Petitioner had imported smart plugs vide Bill of Entry No.8311310 dated 28.07.2020. It is stated that the imported smart plugs are used for extension socket purposes and since the same does not generate any wi-fi or bluetooth signal, petitioner claims that no import licence from the Wireless Procurement Cell, Department of Information and Technology, Government of India was required. Petitioner also got the product tested to certify that the technical features of the product did not fall under licensing requirement.

5. Notwithstanding the above, the apprising officers raised objection regarding requirement of import licence with respect to the imported products. Petitioner agreed for a first check examination of the same which was carried out in the presence of the authorised representative of the petitioner. During the said examination neither any objection was raised nor any inconsistency was found. Despite the above, at the insistence of officers serving in the office of Joint Commissioner of Customs, Nhava Sheva-V i.e. respondent No.3, petitioner furnished three declarations dated 02.09.2020 certifying the truth and veracity of all the declarations. Thereafter office of respondent No.3 vide letter dated 14.09.2020 scheduled a personal hearing on 18.09.2020 through video conferencing which was attended by the authorised representative of the petitioner. The authorised representative told respondent No.3 that all the

(929)-WPL-3933-20.doc.

three declarations were already provided to the apprising officers and therefore requested that the imported goods be released forthwith. However, no recording of personal hearing was communicated to the petitioner.

6. Thereafter respondent No.3 passed the impugned order in original dated 23.09.2020 rejecting the unit price of the goods as declared by the petitioner and directed that the same be redetermined at USD 13.66097 (C/F value) and USD 22.02365 (C/F value). Accordingly, petitioner was directed to pay the resultant differential duty along with applicable interest under section 28AA of the Customs Act, 1962 (briefly “the Customs Act” hereinafter). As a consequence, respondent No.3 confiscated the imported goods under section 111(m) of the Customs Act but gave an option to the petitioner to redeem the confiscated goods upon payment of redemption fine of Rs.4,00,000.00 under section 125 of the Customs Act, further imposing penalty of Rs.1,90,000.00 under section 112(a) of the Customs Act.

7. Aggrieved by the aforesaid order in original dated 23.09.2020 and assailing the same primarily on the ground that it was passed in gross violation of the principles of natural justice, the present writ petition came to be filed.

8. By order dated 06.10.2020, this Court had issued notice. On the next date i.e. on 29.10.2020, liberty was granted to the petitioner to amend the prayer portion of the writ petition and also to file interim



(929)-WPL-3933-20.doc.

application for release of the imported goods.

9. Thereafter petitioner had carried out the amendments in the writ petition including amendment in the prayer portion which reads as under :-

“iii. direct the Respondents itself, its officers, subordinates, servants and agents to release the goods imported vide Bill of Entry No.8311310 dated 28.07.2020 subject to the Applicant furnishing a Bank Guarantee of the amount of Customs Duty declared in the said Bill of Entry No.8311310 dated 28.07.2020 and the redemption fine and penalty imposed under impugned order dated 23.09.2020 passed by Respondent No.3.”

10. On 03.11.2020 this Court after hearing learned counsel for the parties took the view that it would be in the interest of justice if interim relief was granted to the petitioner making it clear that such relief would be subject to outcome of the writ petition. Accordingly, interim relief in terms of prayer clause 23(c)(iii) which has been extracted above was granted.

11. Respondents have filed reply affidavit through Shri. Rajesh Kumar Mishra, Commissioner of Customs, Nhava Sheva-V, Jawaharlal Nehru Customs House, Nhava Sheva. At the outset, a preliminary objection has been raised that against the impugned order in original there is a statutory remedy of appeal as provided under section 128 of the Customs Act before the Commissioner (Appeals). Therefore, the writ petition should be dismissed on the ground of petitioner not availing the

(929)-WPL-3933-20.doc.

alternative remedy as provided under the statute. The allegation that there has been gross violation of the principles of natural justice has been denied. It is stated that initially a query was raised by the office of respondent No.3 on 30.07.2020 and in response thereto petitioner submitted a declaration (dated 'nil') that the imported product was smart plug used for extension socket purpose. It was stated that as the product did not generate bluetooth/wi-fi signals, no import licence from the Wireless Procurement Cell was necessary. Customs department was not satisfied with the above submission. This led to petitioner asking for first check vide letter dated 03.08.2020. Accordingly, the Bill of Entry was examined on first check basis on 03.08.2020 following which a query was again raised on 05.08.2020 for submission of representative sealed sample.

11.1. On verification of the representative sealed sample, it was observed that the imported goods attracted Equipment Type Approval (ETA) compliance and that declared value of the goods also appeared to be low. This was orally informed to the petitioner. In response thereto, petitioner made declaration dated 02.09.2020 stating that the imported products exclusively operate in license bands and comply with the technical parameters. Price mentioned was fair and correct. On the basis of the aforesaid submission, the importer (petitioner) requested respondent No.3 to consider its prayer and to clear the goods. However, respondent No.3 was not satisfied with the submission of the petitioner with regard to valuation of the goods and accordingly a personal hearing was given vide letter dated 16.09.2020.

(929)-WPL-3933-20.doc.

11.2. Importer (petitioner) was also informed about compliance of Equipment Type Approval (ETA) and requirement of licence from the Wireless Procurement Cell, in response to which petitioner initially misled the customs department by writing that Equipment Type Approval (ETA)/ licence from Wireless Procurement Cell is not applicable for the goods. After examining the representative sealed sample, petitioner was informed that the declared value of the goods was low. Therefore, it is quite clear that petitioner was well informed of the allegations prior to passing of the impugned order in original dated 23.09.2020.

11.3. It is stated that petitioner was given due opportunity of personal hearing and based on its submission and request the impugned order in original was passed. In the facts and circumstances of the case, it cannot be said that there was violation of the principles of natural justice, thus leading to infringement of Article 14 of the Constitution of India. Impugned order in original is a well reasoned one and was passed by respondent No.3 within jurisdiction. In the circumstances, respondents seek dismissal of the writ petition.

12. Learned counsel for the petitioner has referred to paragraphs 10, 11 and 12 of the writ petition as well as to the impugned order in original dated 23.09.2020 and submits that the same was passed in violation of section 124 of the Customs Act inasmuch as no show-cause notice was issued to the petitioner before the order of confiscation was passed by way of the impugned order in original. He has also referred to Rule 12 of the Customs Valuation (Determination of Value of Imported



(929)-WPL-3933-20.doc.

Goods) Rules, 2007 to contend that in the event of any dispute as to the value of imported goods as declared the proper officer has to intimate the importer in writing about the grounds for doubting the truth or accuracy of the value and provide a reasonable opportunity of being heard before taking a final decision. In the instant case neither any show-cause notice was issued nor any intimation was given to the petitioner in writing about the grounds for doubting the truth or accuracy of the declared value of the imported goods. No reasonable opportunity of being heard was provided to the petitioner before passing the impugned order in original dated 23.09.2020. Learned counsel for the petitioner has submitted a compilation of documents and case laws. Particularly reliance has been placed on the decision of this Court in **Forbo Siegling Movement Systems India Pvt. Ltd. Vs. Union of Inida, 2013(296) E.L.T. 443**. He therefore submits that when there is violation of the principles of natural justice writ jurisdiction is available to the affected party who cannot be relegated to the appellate forum.

13. On the other hand, Mr. Pradeep S. Jetly has referred to the reliefs sought for by the petitioner. In so far challenge to the impugned order in original dated 23.09.2020 is concerned, he submits that the said order is clearly an appealable order. Under section 128 of the Customs Act appeal against the said order in original would lie before the Commissioner of Customs (Appeals). In such circumstances he submits that this Court may not entertain the writ petition and instead relegate the petitioner to the forum of appeal.



(929)-WPL-3933-20.doc.

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. Basic grievance of the petitioner is to the impugned order in original dated 23.09.2020 passed by respondent No.3. However, as per order of this Court dated 03.11.2020 the imported goods have been released on petitioner furnishing bank guarantee for the amount of customs duty declared in the Bill of Entry No.8311310 dated 28.07.2020 as well as covering the redemption fine and penalty imposed vide the impugned order in original dated 23.09.2020.

16. From a perusal of the impugned order in original, it is seen that petitioner filed Bill of Entry No.8311310 dated 28.07.2020 for the imported goods declaring two varieties of smart plug having unit price of USD 4.13 and 5.036 respectively. The declared total assessable value was Rs.63,13,410.40 and the duty thereon was Rs.19,55,895.00. The impugned order in original records that a personal hearing was held on 18.09.2020 through the mode of video conferencing which was attended by the authorized representative of the petitioner Shri. Ganesh Kumar. Respondent No.3 took the view that the imported goods were under valued and that it was required to be redetermined under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Upon re-determination, he held that the value of the two varieties of the imported goods would be USD 13.66097 and USD 22.02365. Thus he opined that the importer (petitioner) attempted to clear goods by submitting false declarations and under valuing the goods rendering the goods liable for

(929)-WPL-3933-20.doc.

confiscation under section 111(m) of the Customs Act besides being liable for penalty under section 112(a) of the Customs Act. Thereafter the following order was passed :-

“14. I reject the unit price of the goods declared as - ‘SYSKA-MWP-002-BPLEDSL24W(Smart Plug) at USD 4.13 (FOB value) and ‘SYSKA-MWP-003-BPLEDSL24W(Smart Plug)’ at USD 5.036 (FOB value) by the importer. I order the same to be re-determined as USD 13.66097(CIF value) and USD 22.02365(CIF value) respectively (as detailed in the Table A). I order the importer to pay resulting differential duty thereon along with applicable interest under Section 28AA of the Customs Act, 1962. The bill of entry may be assessed accordingly.

15. I confiscate the goods imported vide subject bill of entry No.8311310 dated 28.07.2020 under Section 111(m) of the Custom Act, 1962. However, I given an option to redeem the same upon payment of redemption fine of Rs.4,00,000/- (Rupees Four Lacs only) under Section 125 of the Custom Act, 1962.

16. I impose a penalty of Rs.1,90,000/- (Rupees one Lac Ninety Thousand only) under Section 112(a) of the Customs Act, 1962 on the importer M/s. Syska LED Lights Pvt. Ltd. for their said acts of omission and commissioner.

17. This order is issued without prejudice to any other action that may be initiated against the above mentioned notice/firm or any other person under the provisions of the Customs Act, 1962 or any other law for the time being in force in India.”

(929)-WPL-3933-20.doc.

17. Though the goods were confiscated, option was given to the petitioner to redeem the same on the payment of redemption fine, besides imposing penalty.

18. Confiscation of goods is dealt with in section 111 of the Customs Act. However, section 124 of the Customs Act provides for issue of show-cause notice before confiscation of goods, etc.. Section 124 of the Customs Act reads as under :-

“SECTION 124. Issue of show cause notice before confiscation of goods, etc.-

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the proper approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

(929)-WPL-3933-20.doc.

Provided that the notice referred in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral:

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.”

19. From the above, it is quite evident that mandate of section 124 is that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose the penalty and further the owner of the goods or such person must be given an opportunity of making a representation in writing within such reasonable time as may be stated in the notice against the grounds of confiscation or imposition of penalty and finally the owner of the goods or such person is given a reasonable opportunity of being heard in the matter. Thus three conditions are required to be fulfilled before an order of confiscation is passed or penalty is imposed. Firstly, the person concerned shall be given a notice in writing informing him of the grounds on which the goods are proposed to be confiscated or penalty is proposed to be imposed. Secondly, such person has to be given an opportunity of making a written representation within reasonable time against the grounds of proposed confiscation or imposition of penalty. Lastly, such a person must be given a reasonable opportunity of being heard. However, as per the first proviso, such a notice and

(929)-WPL-3933-20.doc.

representation may be given orally at the request of the person concerned.

20. Admittedly in this case, no notice in writing under section 124(a) of the Customs Act was given to the petitioner before passing the impugned order in original which not only confiscated the goods but also imposed penalty on the petitioner. All that the impugned order in original says is that a personal hearing was given to the authorized representative of the petitioner on 18.09.2020 through video conferencing. There is nothing on record to show or indicate that a request was made on behalf of the petitioner for oral notice or oral representation.

21. We may also refer to Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Rule 12 reads thus :-

“12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable



(929)-WPL-3933-20.doc.

opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-

(1) For the removal of doubts, it is hereby declared that :-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

- (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- (c) the sale involves special discounts limited to exclusive agents;
- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non declaration of parameters such as

(929)-WPL-3933-20.doc.

brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.”

22. A careful perusal of Rule 12 as extracted above would go to show that if the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information and at the request of the importer shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to imported goods and provide a reasonable opportunity of being heard, before taking a final decision.

23. From a reading of the impugned order in original, it does not appear that the procedure laid down for rejection of declared value and redetermination of value was followed.

24. It is a settled proposition that when a law requires a thing to be done in a particular manner, it has to be done in the prescribed manner and proceeding in any other manner is necessarily forbidden.

25. Thus, from the above, it is quite evident that the impugned order in original stands vitiated due to statutory infraction as above leading to violation of the principles of natural justice thereby vitiating the impugned order-in-original.

26. On the submission of Mr. Pradeep S. Jetly, learned senior
BGP



(929)-WPL-3933-20.doc.

counsel for the respondents as to availability of alternative remedy, we may refer to the decision of this Court in **Forbo Siegling Movement Systems India Pvt. Ltd.** (*supra*). That was also a case where challenge was made to an order passed by the Deputy Commissioner of Customs assessing the bills of entry under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with section 14 of the Customs Act after making an addition to the declared value. After noting that such an order was subject to an appeal under section 128(1) of the Customs Act and also examining the provisions of Rule 12, it was held as under :-

“10. The explanation to Rule 12 makes it clear that the rule does not by itself provide a method for determination of value but it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value. Where the declared value is rejected, the value has to be determined by proceeding sequentially in accordance with Rules 4 to 9. In the present case, the grievance of the petitioners turns upon an alleged non-compliance of the provisions of sub-rules (1) and (2) of Rule 12.

11. Under sub-rule (1) of Rule 12, when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information. This information sought may include documents or other evidence. If, after receiving such further information, or in the absence of a response of the importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction

(929)-WPL-3933-20.doc.

value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3. Sub-rule (2) of Rule 12, provides that at the request of an importer, the proper officer shall intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by the importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1). Explanation (ii) to Rule 12 posits an enquiry in consultation with the importer. The subordinate legislation has expressly incorporated norms requiring observance of the principles of natural justice.

12. The provisions of Rule 12 contain the procedure which the proper officer is required to follow before rejecting the declared value. In the first instance, when the proper officer has reason to doubt the truth or accuracy of the value, he may ask the importer to furnish further information including documents or other evidence. If upon a scrutiny of the information he is satisfied with the transaction value declared, then in such a case the provisions of Rule 3(1) would come into operation. On the other hand, if the importer fails to supply information or if the proper officer still has reason to doubt the truth or accuracy of the value declared despite the information, sub-rule (2) requires him to intimate the importer in writing of the grounds for doubting the truth or accuracy of the value declared, on the request of the importer. The object of doing so is to enable the importer to have a fair opportunity to meet the grounds of doubt entertained by the proper officer. Rule 12(2) stipulates a requirement of a reasonable opportunity of being heard. Such an opportunity can have meaning only if the importer is apprised of the grounds on the basis of which the transaction value is doubted by the proper officer. In the absence of a disclosure of the grounds on which the doubt is

(929)-WPL-3933-20.doc.

entertained, the importer would not know of the case against him nor would he be in a position to explain why the doubt which the proper officer entertains as to the truth or accuracy of the value is incorrect. Hence, before the proper officer proceeds to reject the declared value, he is under a mandate to furnish the grounds in writing for doubting the truth or accuracy of the value declared by the importer. Thereupon the importer must have a reasonable opportunity of being heard to enable him to urge such submissions as he may desire in writing in regard to the grounds which are set out by the proper officer. That is the scheme.

13. In the present case, as the record before the Court would indicate, the procedure which is laid down in Rule 12 was not followed. The proper officer initially called upon the importer to submit documentary material. This was in compliance with the requirements of Rule 12(1). Upon scrutinising the material, evidently the proper officer had reason to doubt the truth or accuracy of the transaction value declared by the importer. The proper officer was required to formulate the grounds on which he entertained a doubt in writing and to furnish them to the importer. The importer had no opportunity to call upon the proper officer to disclose the grounds because the record would indicate that after the importer submitted a letter dated 25 February, 2013, the Deputy Commissioner of Customs proceeded to dispose of the case by passing the impugned order, dated 19 March 2013. By failing to inform the importer of the grounds of his doubt and of allowing the importer an opportunity of being heard with reference to those grounds, there has been a clear breach of principles of natural justice.

14. We are not inclined to accede to the submission of Counsel appearing on behalf of the respondents that the

(929)-WPL-3933-20.doc.

petitioners should be relegated to the remedy of an appeal in these circumstances. There has been a clear breach of the principles of natural justice by the failure on the part of the Deputy Commissioner of Customs to follow the mandatory requirement of Rule 12. The existence of an alternate remedy of an appeal is not a bar to the maintainability of a petition under Article 226 of the Constitution where there is a breach of the principles of natural justice. Moreover, the mere existence of an appellate remedy, it is well settled, would not remedy a breach of the principles of natural justice at the original stage. We also take serious note of the statement made in the affidavit in reply to the effect that even if this Court would direct the Deputy Commissioner of Customs to issue a notice to show cause, the grounds of the notice would be the same as those contained in the impugned order and that the quasi judicial order which the authority would pass would be the same as the Order-in-Original, dated 19 March 2013. This is clearly indicative of the fact that the Deputy Commissioner of Customs has a closed mind and treats a compliance with the principles of natural justice as a mere formality. Hence, while we are inclined to set aside the impugned order and remit the matter back for fresh decision after complying with the requirements of Rule 12, we direct the Commissioner of Customs to assign the case to some other officer, other than the officer by whom the impugned order is passed. We record our disapproval of the manner in which the affidavit in reply has been drafted. Counsel for the Revenue, in fact, stated during the hearing that the aforesaid addition was made by the Deputy Commissioner of Customs on his own accord, without reference to Counsel, and even suggested that the offending party may be expunged.”

27. Thus this Court held that where there is a breach of principles



(929)-WPL-3933-20.doc.

of natural justice, existence of an alternate remedy of appeal would be no bar to exercise of jurisdiction under Article 226 of the Constitution of India.

28. In the light of the discussions made above, we are of the unhesitant view that the impugned order in original is clearly unsustainable in law being in violation of the principles of natural justice as well as the statutory provisions as alluded to hereinabove. In the circumstances, relegating the petitioner to the forum of appeal does not arise.

29. Consequently, we set aside the impugned order in original dated 23.09.2020 and direct that the proper officer may proceed with the matter afresh, if he is so inclined, by following the mandate of section 124 of the Customs Act and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. We further direct that respondent No.2 shall assign the hearing to a proper officer other than respondent No.3, who had passed the impugned order in original.

30. Writ petition is accordingly allowed to the extent indicated above. However, there shall be no order as to cost.

MILIND N. JADHAV, J

UJJAL BHUYAN, J