

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 26.04.2010
Judgment Delivered on: 30.04.2010

+ **WP.(C).1676/2010**

A K NIJHAWAN ... Petitioner

- versus -

UNION OF INDIA & ORS. ... Respondents

+ **WP.(C).1678/2010**

K K VOHRA ... Petitioner

- versus -

UNION OF INDIA & ORS. ... Respondents

+ **WP.(C).1679/2010**

K K VOHRA ... Petitioner

- versus -

UNION OF INDIA & ORS. ... Respondents

+ **WP.(C).1688/2010**

B B GOEL ... Petitioner

- versus -

UNION OF INDIA & ORS. ... Respondents

+ **WP.(C).1697/2010**

K K VOHRA ... Petitioner

- versus -

UNION OF INDIA & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr C Harishanker, & Mr.S.Sunil
For the Respondents : Mr Roshan Lal Goel & Mr.Mukesh Anand

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J.

1. By this common order, we shall dispose of all the five writ petitions referred above, which involve identical questions of fact and law.

2. The petitioners are officers of the Customs Department. Show-cause notices were issued to the petitioners by the Directorate of Revenue Intelligence, requiring them to show cause as to why penal action under the provisions of Customs Act, 1962 be not taken against them. Vide Order - in - Original No.04/GS/CC/DRI/NCH/2007 dated 12.3.2007, Shri Gurbans Singh, Commissioner of Central Excise(Adjudication), decided not to impose penalty on Shri A.K.Nijhawan, petitioner in WP.(C).1676/2010 and Shri K.K.Vohra, petitioner in WP(C).1678/2010. Vide Order - in - Original No.12/GS/CC/DRI /NCH/06 dated 22.12.2006, Shri Gurbans Singh decided not to impose penalty on Shri B.B.Goel, petitioner in WP.(C).1688/2010. Vide Order - in -

Original No.11/GS/CC/DRI/ NCH/ 06 dated 22.12.2006, which pertains to WP.(C).1697/2010, Shri Gurbans Singh, decided not to impose penalty on Shri K.K.Vohra. Vide Order - in - Original No.10/GS/CC/DRI/NCH/06 dated 22.12.2006, which pertains to WP.(C).1679/2010, he decided not to impose penalty on Shri K.K.Vohra.

3. Appeals were filed by the Commissioner of Customs before the Customs, Excise & Service Tax Appellate Tribunal, challenging the orders passed by Commissioner of Central Excise(Adjudication) thereby deciding not to impose penalty upon the petitioners. A perusal of all the copies of appeals filed in WP.(C).1676/2010, WP.(C).1678/2010, WP.(C).1697/2010 & WP.(C).1679/2010 would show that the appeals were directed only against the customs officers and the only prayer made in the appeals was seeking orders from the CESTAT, imposing penalty on the Customs Officers. The names of the Customs Officers were, however, not shown as respondents in the Form annexed to the appeal and only the concerned exporter was shown as respondent. The address at which notice was to be sent to the respondent was the address of the exporter and not of the Customs Officers. Though Shri B.B.Goel, petitioner in WP.(C).1688/2010 has not filed a copy

of the appeal of the Department in his case, we presume that the appeal filed against him was identical to the appeals filed against other petitioners.

4. The Tribunal vide Order dated 18.6.2009, remanded all the appeals filed by the Department against Customs Officers to the Adjudicating Authority for de novo proceedings, after noticing that none of the respondents was present. In the order passed by the Tribunal, the exporters were shown as respondents. None of the Customs Officers was shown as a respondent in the order passed by the Tribunal.

5. In the counter-affidavit filed by the respondents, it has been admitted that the petitioners were not made respondents in the appeals filed before CESTAT and no notice was sent to them by the Tribunal.

6. Since the prayer made in the appeals was directed only against the Customs Officers, it cannot be disputed that the appeals were directed only against them. It was, however, obligatory on the part of the respondents to show the name of the petitioners as respondents against the column of respondent in the Form annexed to the appeal. Had the respondents done so, the Tribunal would obviously have issued notice to the petitioners instead of issuing the same to the

concerned exporter. As noted earlier, Commissioner of Customs(Adjudication), Shri Gurbans Singh had passed an order favourable to the petitioners by deciding not to impose any penalty upon them. The order passed by him, to the extent he decided not to impose any penalty on the petitioners, could not have been set aside and the matter could not have been remanded back to the Adjudicating Authority for de novo proceedings, without issuing notice to the petitioners and without giving an opportunity of hearing to them. As a result of no notice and no opportunity of hearing having been given to the petitioners, they have been denied an opportunity to contest the appeal filed by the Department and to present their case before the Tribunal. The order passed by the Tribunal being violative of the principles of natural justice and having been passed at the back of the petitioners without serving any notice upon them and without giving any opportunity of hearing to them is, therefore, liable to be set aside to the extent it relates to the present petitioners. As a necessary consequence, the fresh order passed by the respondent No.2 in de novo proceedings conducted by him, pursuant to the order of the Tribunal dated 18.6.2009, is also liable to be set aside, to the extent it pertains to the petitioners.

7. For the reasons given in the preceding paragraphs, the impugned order dated 18.6.2009 passed by the Tribunal as well as the impugned orders dated 21.12.2009 passed by respondent No.2, to the extent they impose penalty upon the petitioners, are hereby set aside. The Tribunal is directed to pass fresh order in the appeals of the Department against the petitioners, after giving opportunity of hearing to the parties. The parties are directed to appear before the Tribunal on 17th May, 2010 in the first instance. No further notice would be necessary for their participation in the said appeals. All the five writ petitions stand disposed of.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

APRIL 30, 2010
RS/