



भारत सरकार

GOVERNMENT OF INDIA

सीमाशुल्क प्रधान आयुक्त का कार्यालय (विमानपत्तन व हवाई माल परिसर)

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (AIRPORT & A.C.C)

सीमाशुल्क सदन, 15/1 स्ट्रैंड रोड, कोलकाता- 700001

CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA- 700001

टेलीफोन / TELEPHONE : 91-33-2243-5372

F.No. S33- 22/2017 Adjn (A & A)

Dated-28.12.2021

To

M/s Sadguru Forwarders Pvt. Ltd.,
C-10, Sahar Roy Apartments,
Opp. Sahar Cargo Complex, Sahar,
Andheri East, Mumbai - 400099..

Subject:-Intimation of Personal Hearing in respect of Show Cause Notice No. DRI/KZU/CF/Int-15/Enq-50/2017/Pt. Pasific dated 01.12.2017 issued by the Additional Director General, DRI, KZU under Section 124 of the Customs Act, 1962 in the matter of M/s Pasific Enterprises.

With reference to the above mentioned subject Show Cause Notice, please refer to your letter dated 31.03.2018, wherein you have denied and disputed all the allegations levelled against you in the subject Show Cause Notice. Vide the said letter, you have sought cross-examination of Shri Alope Ghosh (Noticee No. 08) and Md. Nasir Uddin (Noticee No. 05) to verify the veracity of their statements and also requested for an opportunity of Personal Hearing. You may also refer to your letter dated 12.07.2018, wherein you have cited the judgment dated 10.07.2018 of the Hon'ble High Court, Calcutta in the matter of Navneet Kumar Vs. Union of India & Ors.

2. In this regard, it is imperative to mention here that the judgment of the Hon'ble **High Court of Calcutta** in the matter of **Navneet Kumar Vs. Union of India, [2018 (362) ELT 17 (Cal)]** may be relied upon, wherein the Court passed the order dated

05.11.2019 in favour of the Department. The relevant portions of the Order are furnished below:-

"-----One has to look at Section 124 of the said Act. It says that on order confiscating any goods or imposing any penalty on any person shall be made without a notice in writing with the prior approval of an officer of Customs not below the rank of an Assistant Commissioner of Customs.

The question to be answered in this appeal is whether the Additional Director General, the Zonal unit, Kolkata of the DRI had the authority and the power to issue the SCN dated 02.12.2017.

*At the outset I observe that the argument made that the SCN had to be issued by a proper officer is incorrect. Section 2(34) of the said Act enacts that a proper officer is one who is assigned functions to be performed by that category of officer, by the Board or the Principal Commissioner of Customs or Commissioner of Customs. On 2nd May, 2012, the Board designated some officers to be proper officers. While designating such officers the function that each of such officers had to perform under a specified Section of the said Act was provided. Each of these Sections referred to a proper officer to discharge the functions specified in that Section. Section 124 is not one of those Sections. In Section 124 of the said Act, the power has been given to an officer of Customs not below the rank of an Assistant Commissioner of Customs to issue a SCN. There is no reference to a proper officer. In those circumstances, the argument of the respondent writ petitioners or the finding of the learned judge that **the impugned SCN had not been issued by a proper officer has no basis whatsoever and is rejected outright.***

---All the appeals are allowed. The impugned judgment and order dated 10.07.2018 is set aside. All interim orders are vacated. All the connected applications are disposed of by this order. All the writ applications are dismissed."

3. Moreover, in respect of cross-examination of Shri Alope Ghosh (Noticee No. 08) and Md. Nasir Uddin (Noticee No. 05), no cogent reasons were adduced to demand & justify cross-examination. It is seen that while seeking cross-examination, you have not provided any evidence to suggest any bias/malice towards him. Primarily for this reason, denial of cross-examination of such persons would not affect the evidentiary

value of the Noticee's case/interest. Therefore, insistence on cross-examining them can be purely strategic with a view to raise a contention of violation of Principles of natural justice, which cannot be agitated in matters like this, where the statements tendered by them are voluntary. The right to cross-examination is not an absolute right and question whether the Noticee is entitled to cross-examination, largely depends on the facts and circumstances of the case. (The request made by the Noticee to cross-examine the persons is generalized one). Evidence in adjudication proceeding is not necessarily akin to the one in criminal case. It is settled principle of law that cross-examination is not required when the circumstantial evidence provides reliable basis and corroborating statements to prove the point. There are catena of judicial pronouncements on the issue, which are as follows:-

i.) Indru Ramchand Vs UOI [1988(38) ELT459 DEL] at Delhi High Court.

ii.) Jagdish Shankar Trivedi Vs Commissioner of Customs, Kanpur [2006(19420 ELT 209(TRI-Del)], the Principal Bench of the CESTAT, New Delhi.

iii.) Layakat Shah Vs CCE[2000(120)ELT 556]CESTAT

iv.) GTC Industries Ltd. Vs. Commissioner of Customs, New Delhi [2011(264)ELT 433 (Tri-Del)]

v.) M/s Sharda Ramdas Sangle Vs Commissioner of C. Ex. & Cus, Aurangabad 2017(347) ELT 413 (Bom).

4. Thus, the cross-examination sought by you is without any merit and such cross-examination would delay the adjudication proceedings. In these circumstances, the Adjudicating Authority is not inclined to allow cross-examination sought by you considering the facts and circumstances of the case and such denial would not lead to violation of Principles of Natural Justice.

5. In view of above, cross-examination of co-Noticees, Shri Alope Ghosh (Noticee No. 08) and Md. Nasir Uddin (Noticee No. 05) is denied by the Adjudicating Authority. You have to appear for Personal Hearing, either in person or through your Authorized Representative/Consultant and make final submissions, if any, to the Show Cause