IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.03.2023

\+ **CUSAA 223/2019**

COMMISSIONER OF CUSTOMS (AIRPORT& GENERAL) .....Appellant

versus

M/S R.P. CARGO HANDLING SERVICES ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Harpreet Singh, SSC with Mr. Jatin Kumar Gaur, Adv.

For the Respondent : Ms. Priyadarshi Manish, Mrs. Anjali Jha Manish & Ms. DivyaRastogi, Advs.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The appellant (Revenue) has filed the present appeal under Section 130 of the Customs Act, 1962 (hereafter '**the Act**') impugning an order dated 26.04.2019 (Final Order No. C/A/50592/2019-CU, hereafter '**the impugned order**') passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereafter '**the Tribunal**') in Service Tax Appeal No. C/50490/2019.

2. The respondent (M/s R.P. Cargo Handling Services) had filed the aforementioned appeal before the learned Tribunal impugning the order-in-original dated 04.02.2019, passed by the Commissioner of Customs (Airport & General) (hereafter '**the Commissioner**'). In terms of the said order dated 04.02.2019, the Commissioner had revoked the respondent's Customs Broker License (CB License No. R-59/DEL/CUS/2016 – hereafter '**the CB License'**); directing forfeiture of the security deposit of ₹5,00,000/-; and imposed a penalty of ₹50,000/- on the respondent.

3. The question that falls for consideration of this Court is whether the learned Tribunal was correct in holding that a show cause notice under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 (hereafter '**the CBLR**') is required to be received by the customs broker within a period of ninety days of the receipt of the offence report and it is not sufficient that the notice is sent within the said period of ninety days.

4. The aforesaid question arises in the following context.

4.1 The respondent is a customs broker and at the material time was holding the CB License, which was valid up to 01.09.2026. The said license was issued under Regulation 7 of the CBLR.

4.2 It is alleged that certain goods, which were stored in custom bonded warehouses, were diverted to the domestic market without payment of customs duty. Further, forged and fabricated documents were prepared to show re-export of the warehoused goods. For the

said purposes, four fictitious firms were created and their IECs were obtained.

4.3 It was found by the Commissioner that the respondent firm had not physically verified the premises of the firms – which were found to be fictitious – but had acted on the KYC documents in respect of the firms received from one, Sh. Sanjeev Maggu (stated to be the mastermind of the fraud), without verifying his antecedents.

4.4 The investigation report dated 10.05.2018 – on the basis of which the proceedings were initiated against the respondent firm – was received from the Directorate of Revenue Intelligence (hereafter '**the DRI**') in the office of the Commissioner on 18.05.2018. It appeared that the respondent was also involved in the said activity of importing goods and diverting them from public bonded warehouses.

4.5 The show cause notice dated 10.08.2018 was issued to the respondent alleging that he had failed to perform various obligations under the CBLR and further proposing forfeiture of the security and imposition of penalty. Thereafter, an inquiry officer was appointed, who conducted the enquiry.

4.6 The inquiry officer submitted a report dated 06.11.2018 finding no fault with the respondent. The Commissioner did not agree with the report submitted by the inquiry officer and entered a 'disagreement note' dated 30.11.2018. Thereafter, the respondent was afforded an opportunity of being heard. On 30.01.2019, the respondent also filed its written submissions contesting the allegations.

4.7 The Commissioner did not accept the respondent's contention and passed an order-in-original dated 04.02.2019, revoking the respondent's CB license, forfeiting the security deposit of ₹5,00,000/- as well as imposing a penalty of ₹50,000/-.

4.8 The respondent appealed the said order dated 04.02.2019 before the learned Tribunal, *inter alia*, contending that it had received the show cause notice on 28.08.2018, which was beyond the period of ninety days from the receipt of the offence report. Thus, in terms of Regulation 20(1) of the CBLR, the proceeding initiated under Section 20 of the CBLR was beyond the period of limitation and was not maintainable. The learned Tribunal accepted the said contention and held that the notice under Regulation 20(1) of the CBLR was required to be received by the customs broker, against whom action under the CBLR is proposed, within a period of ninety days of the offence report. Since, in the present case, the notice was received by the respondent on 28.08.2018, it was beyond the period of ninety days from the receipt of the offence report dated 10.05.2018 that was received by the Commissioner on 18.05.2018.

4.9 In the present case, the show cause notice was prepared on 10.08.2018 and was handed over to the postal authority on 14.08.2018 for being dispatched by 'speed post'. The postal authority had attempted to deliver the show cause notice to the respondent on 16.08.2018, 17.08.2018 and 18.08.2018 at its given address. The article was returned back with the remark of postal authority that "*Bar Bar jane par band Milta Hai"*, which freely translated means that the

premises were found closed on repeated visits. The show cause notice was served by hand to the respondent on 28.08.2018.

Reasons and Conclusion

5. At the outset, it would be relevant to refer to Regulation 20(1) of the CBLR. The same is set out below.

> **"REGULATION 20. Procedure for revoking license or imposing penalty.-** (1) The [Principal Commissioner or Commissioner] of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs."

6. In terms of Regulation 20(1) of the CBLR, the Commissioner is required to issue a notice in writing to the customs broker within a period of ninety days from the date of receipt of the offence report. It is contended on behalf of the respondent that the term '*issue*' must be read to mean '*serve*' and must be received by the customs broker within the stipulated period. In the present case, the show cause notice was not received within a period of ninety days from 18.05.2018 (the date of receipt of the investigation report by the Commissioner); therefore, the proceedings against the respondent were not maintainable on account of the show cause notice being issued beyond

the period as specified in Regulation 20(1) of the CBLR. The respondent also contends that the scheme of Regulation 20 of the CBLR makes it amply clear that the term 'issue' must be interpreted to mean receipt because of the strict timelines, provided under Regulation 20 of the CBLR, which commence from the date of issue of the show cause notice. The customs broker is required to submit its reply within a period of thirty days, and on receipt of such written statement, the inquiry is required to be conducted. In terms of Sub-regulation (5) of Regulation 20 of the CBLR, the inquiry officer is required to submit a report within a period of ninety days from the date of the issue of notice. It is contended that if the expression "*issue a notice*" is considered as 'dispatch of notice' and the written statement is to be filed within a period of thirty days of receipt of the notice; it is obvious that depending on the time taken for service of the notice, the time available for preparing the inquiry report would vary. It is contended that this could not be the legislative intent.

7. The respondent also relies on the decision of the Supreme Court in ***Commissioner of Wealth Tax, UP & Anr. v. Kundan Lal Behari Lal***[1]. In that case, the Supreme Court had referred to its earlier decision in the case of ***Banarsi Debi v. Income Tax Officer, District IV, Calcutta & Ors.***[2] and the decision of the Allahabad High Court in ***Sri Niwas & Ors. v. The Income-Tax Officer 'A' Ward, Sitapur***[3] and had accepted the proposition that the expression 'issued' and 'served'

[1]***(1975) 4 SCC 844.***
[2]***(1964) 7 SCR 539.***
[3]***(1956) 30 ITR 381.***

are used as inter-changeable terms in the legislative practice of our country. Accordingly, the Supreme Court held that the word 'issued' occurring in Section 18(2A) of the Wealth Tax Act, 1957 would mean 'served'.

8. Ms. Manish, learned counsel appearing for the respondent, had also referred to the decision of the Supreme Court in the case of ***Municipal Corporation of Delhi v. Dharma Properties Private Limited***[4] as well as the decision of this Court in ***Purushottam Jajodia v. Directorate of Revenue Intelligence, New Delhi & Anr.***[5], in support of the contention that the term 'issued', as used in Regulation 20(1) of the CBLR, is required to be considered as 'served' or 'received'.

9. The learned Tribunal had referred to the aforesaid decision in the case of ***Kundan Lal Behari Lal***[1] and on the strength of the said decision, held that the issue of notice was required to be construed as receipt of notice by the customs broker.

10. We are of the view that the question whether the word 'issue' is required to be construed as 'served' must be examined in the context of the relevant statute.

11. Regulation 20 of the CBLR provides for the procedure for revoking the license or imposing the penalty. The said procedure is required to be commenced by the Commissioner by issuing a notice to

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[4]***(2018) 11 SCC 230.***
[5]***2014 SCC OnLine Del 3796.***

the customs broker. It is at once clear that the action contemplated is of preparing the notice and putting it for dispatch as that is the only action that the Commissioner can directly perform. In terms of Regulation 20(1) of the CBLR, the Commissioner has ninety days from the date of receipt of the offence report to take the necessary action to trigger the procedure under Regulation 20 of the CBLR and therefore, the expression 'issue' must necessarily be construed to mean the action of preparing the notice and despatching the same; it cannot be construed as serving the notice on the customs broker or receipt of the notice by the customs broker. The question whether the Commissioner has taken the necessary steps to commence the proceedings under Regulation 20 of CBLR – which he has to do within the stipulated period of ninety days – is not contingent on the customs broker receiving the notice.

12. As it would be apparent in the facts of the present case, notice was, in fact, issued within the period of ninety days as contemplated under Regulation 20(1) of the CBLR. Attempts to deliver the said notice to the respondent were also made within the said period but the notice could not be delivered by the postal authority as the premises of the respondent was found closed. Clearly, the question whether the procedure under Regulation 20 of the CBLR is triggered within time is not dependent on the customs broker receiving the notice.

13. The Black's Law Dictionary[6] defines the word 'issue' as under:-

> "**Issue**, v. To send forth; to emit; to promulgate; as, an officer *issues* orders, process *issues* from a court. To put into circulation; as, the treasury *issues* notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding."

14. The plain reading of the word 'issue' is to set forth or to emit; it is not receipt or service. As stated above, the context in which the word 'issue' was used in Regulation 20(1) of the CBLR, the word 'issue' cannot be interpreted to mean 'serve' or 'receipt'.

15. In ***Webster v. Sharpe***[7] the Supreme Court of North Carolina had examined the meaning of the word 'issue' in the context of issuance of summons under Sections 199 and 161 of The Code of North Carolina (enacted March 2, 1883) and observed as under:-

> "An action is commenced by issuing a summons. Code, sec. 199. And an action is commenced when a summons is issued against a defendant. Code, sec. 161. This involves the question as to what is meant by the word "issue," and we are of the opinion that it means going out of the hands of the clerk, expressed or implied, to be delivered to the sheriff for service. If the clerk delivers it to the sheriff to be served, it is then issued; or if the clerk delivers it to the plaintiff, or some one else, to be delivered by him to the sheriff, this is an issue of the summons; or, as is often the case, if the summons is filled out by the attorney of plaintiff, and put in the hands of the sheriff. This is done by the implied consent

[6]Black's Law Dictionary (West Group 1990) (6th Ed.) 'issue' 830.
[7]***116 N.C. 466, 21 S.E. 912.***

> of the clerk, and in our opinion constitutes an issuance from the time it is placed in the hands of the sheriff for service."

16. We find no reason to interpret the word 'issue', as used in regulation 20(1) of CBLR, in any way other than its plain meaning. In the context of issue of summons or notices, the same would be issued when they are prepared and put in the course for communicating to the recipient.

17. We are unable to accept that the decision in the case of ***Kundan Lal Behari Lal***[1] is determinative of the question as to the meaning of the term 'issue' as used in Regulation 20(1) of the CBLR. First of all, the decision in ***Kundan Lal Behari Lal***[1] was rendered in the context of Section 18(2A) of the Wealth Tax Act, 1957. Section 18(2A) enabled the Commissioner of Wealth Tax to reduce or waive penalty in cases where he was satisfied that the assessee had "*prior to the issue of notice to him*", voluntarily and in good faith, made full disclosure of his wealth. The object of imposing the condition of full disclosure prior to issue of notice was to mitigate the penalties liable to be levied on the assesses, who had without notice of initiation of proceedings under the Wealth Tax Act, 1957, made full disclosure of their wealth in good faith. Thus, flowing from the principle of purposive interpretation, the expression "*prior to issue of notice*" was interpreted to mean 'prior to service of notice'. This decision is not an authority for the proposition that the word 'issue' and 'serve' are used as synonyms in all Indian statutes.

18. Second, that the said decision rested entirely on the decision of ***Banarsi Debi***[2] and ***Sri Niwas & Ors.***[3]. The decision in the case of ***Banarsi Debi***[2] was rendered in the context of Section 34(1) of the Income Tax Act, 1922. In terms of Section 34(1)(b) of the Income Tax Act, 1922, the income tax officer was required to serve a notice on the assessee before proceeding to assess or re-assess income from profit gains, which he had reason to believe had escaped assessment or was under-assessed. It is important to note that the word used in Sub-section 34(1)(b) of the Income Tax Act, 1922 was 'serve' and not 'issued'.

19. In ***Banarsi Debi***[2], the date of the notice for re-opening the assessments was within the eight years from the end of the relevant Assessment Year but the same was served beyond the period of eight years. One of the questions that arose for consideration of the court in that case related to the interpretation of Section 4 of the Indian Income Tax (Amendment) Act, 1959 (hereafter '**the Amending Act**'). The object of the said Section was to save the validity of the notices which were issued beyond the prescribed time. Section 4 of the Amending Act used the word 'issue'. The court held that if the narrow meaning is given to the expression 'issue', the Section would be unworkable because the objective of the Amending Act was to save the validity of the notices issued under Section 34(1) of the Income Tax Act, 1922, which were beyond the period of eight years. It is in that context that the court held that the word 'issue' under Section 4 of the Amending Act was used interchangeably as 'served', as the object was to save

the notices which were served beyond the period of eight years. The court held that it was obvious that the expression 'issue', as used in Section 4 of the Amending Act, was not used in a narrow sense of 'sent' as the principal Section 34(1) of the Income Tax Act, 1922 required the notice to be served within the prescribed period (eight years). The relevant extract of the said decision is set out below:-

> "**9.** With this background let us give a closer look to the provisions of Section 4 of the Amending Act. The object of the section is to save the validity of a notice issued beyond the prescribed time. Though the time within which such notice should have been issued under Section 34(1) of the Act, as it stood before its amendment by Section 18 of the Finance Act of 1956, had expired, the said notice would be valid. Under Section 34(1) of the Act, as we have already pointed out, the time prescribed was only for service of the notice. As the notice mentioned in Section 4 of the Amending Act is linked with the time prescribed under the Act, the section becomes unworkable if the narrow meaning is given to the expression "issued". On the other hand, if we give wider meaning to the word, the section would be consistent with the provisions of Section 34(1) of the Act. Moreover, the narrow meaning would introduce anomalies in the section : while the notice, assessment or reassessment were saved, the intermediate stage of service would be avoided. To put it in other words, if the proceedings were only at the stage of issue of notice, the notice could not be questioned, but if it was served, it could be questioned; though it was served beyond time, if the assessment was completed, its validity could not be questioned. The result would be that the validity of an assessment proceeding would depend upon the stage at which the assessee seeks to question it. That could not have been the intention of the legislature. All these

> anomalies would disappear if the expression was given the wider meaning."

20. It is material to note that there was a significant change in the scheme of re-opening of the assessments under the Income Tax Act, 1961. The provisions regarding the re-opening of the assessments are now enacted under Sections 147, 148 and 149 of the Income Tax Act, 1961. The said provisions made a clear distinction between issuance of notice and service of notice. In ***R.K. Upadhyaya v. Shanabhai P. Patel***[8], the Supreme Court allowed an appeal from the order of the High Court quashing the notice issued under Section 147 of the Income Tax Act, 1961 on the ground that it was barred by limitation. The High Court had relied on the decision in the case of ***Banarsi Debi***[2] and held that the notice under Section 149(1) of the Income Tax Act, 1961 was required to be served within the prescribed period of limitation. It is material to note that in this case, the notice was sent by registered post on 31.03.1970 and was received by the assessee on 03.04.1970. Section 149(1) of the Income Tax Act, 1961 stipulated that no notice under Section 148 of the Income Tax Act, 1961 would be issued in cases falling under Section 147(b) of the Income Tax Act, 1961 at any time subsequent to the expiry of four years after the expiry of the relevant Assessment Year. In this case, the assessment was sought to be reopened under Section 147(b) of the of the Income Tax Act, 1961 and the period of four years expired on 31.03.1970. As stated above, the High Court was of the view that the word 'issued' as

[8]***(1987) 3 SCC 96.***

used under Section 149(1) of the Income Tax Act, 1961 was required to be construed as served. Since the notice was served beyond the period of four years, the same was held to be beyond the period of limitation. The Supreme Court distinguished the decision in ***Banarsi Debi***[2] and held as under:-

> "Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J.P. *Janni*, *ITO* v. *Induprasad D. Bhatt* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 72 ITR 595] as also in *CIT* v. *Robert J. Sas* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 48 ITR 177] . The High Court in our opinion went wrong in relying upon the ratio of *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between "issue of notice" and "service of notice" under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under Section 148 shall be *issued* after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that

> period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] . As the Income Tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs."

21. In the present case, there is no ambiguity in the language of Regulation 20(1) of the CBLR. It requires that the Commissioner issues a notice within the period of ninety days from the receipt of the offence report. There is, thus, no reason to construe the expression 'issue' any different from its plain meaning. The decision of the Supreme Court in ***R.K. Upadhyaya***[8] also recognizes that the plain meaning of the expression 'issuance of notice' would be to dispatch the same.

22. It is also relevant to refer to the decision of the Coordinate Bench of this Court in ***Mayawati v. CIT, Delhi (Central-I) & Ors.***[9]. In that case, this Court had observed as under:-

> "6. In stark contrast, Section 149 of the IT Act speaks only of the issuance of a notice under the preceding Section within a prescribed period. Section 149 of the IT Act does not mandate that such a notice must also be served on the

[9] ***2009 SCC OnLine Del 336.***

assessee within the prescribed period."

23. The said decision clearly supports the view that there is a distinction between issuance of notice and service of notice and the words 'issue' and 'serve' are not synonymous. The said words may be construed as interchangeable only if the context of the statute makes it necessary to do so.

24. The decision of the Supreme Court in the case of ***Dharma Properties Private Limited***[4] and the decision of this Court in ***Purushottam Jajodia***[5] are not relevant to the controversy. In ***Dharma Properties Private Limited***[4], the Supreme Court was called upon to interpret the meaning of the word 'give'. It is in that context that the Supreme Court had referred to the decision in the case of ***Banarsi Debi***[2]. In ***Purushottam Jajodia***[5], this Court was concerned with interpreting the expression "*given a notice*" as used in Section 124 of the Customs Act, 1962. In terms of the said Section, no order confiscating the goods or imposing a penalty on any person could be made unless the owner of the goods or such person is given a notice in writing. Clearly, this meant serving the notice to the concerned person.

25. Before concluding, it is also relevant to note that the learned Tribunal in a latter decision in ***D.S. Cargo Agency v. Commissioner of Customs, (Airport and General) NCH***[10] has taken a view which is

[10]***2021 SCC OnLine CESTAT 3310***

contrary to the impugned order.

26. For the reasons as discussed above, we are of the opinion that the learned Tribunal has erred in holding that the Commissioner was required to serve a notice to the respondent within a period of ninety days from the date of receipt of the offence report. The Commissioner was required to issue a notice within the period of ninety days and there is no dispute that it had done so. The question, as framed in paragraph no.3 above, is answered in the favour of the Revenue against the respondent.

27. The appeal is allowed. The impugned order is set aside and the matter is remanded to the learned Tribunal to consider the respondent's appeal on merits.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 02, 2023