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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8315/2002**

M/S.M.S.SHOES EAST LTD.

..... Petitioner

Through

Mr. J.S. Sinha with Mr. M.P. Sahay,
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through

Mr. Kamal Kant Jha, Sr. Panel
Counsel with Mr. A.K. Bhan, for R-1
Ms. K. Enatoli Sema, Adv. for
respondents 2 & 3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE NAJMI WAZIRI

ORDER

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20.07.2016

1. The challenge in this petition is to an order dated 20th August 2002 passed by the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, rejecting the revision application filed by the petitioner under Section 129DD of the Customs Act, 1962 ('CA') against an order in appeal dated 19th January 2001 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The discussion of facts of the case may not be necessary in view of the short ground on which the present petition is being disposed of.

3. One of the grounds urged by the Petitioner in the rejoinder is that

the impugned order was in fact not signed by the Joint Secretary ('JS'). This fact was noticed in the following order passed by the Court on 4th April 2016:

“2. Counsel for the Petitioner points out that in the rejoinder the Petitioner raised the point that the impugned order No. 277/2002 dated 20th' August 2002 passed by Mr Dinesh Kacker, the Joint Secretary (JS) to the Government of India, in the Department of Revenue, was in fact not signed by the said JS. He states that this fact can be verified only if the original file (being F. No. 375/3 l/DBK/2001-RA.Cus) in which the order was passed is produced before the Court.”

4. On 30th May 2016, a final opportunity was granted to the Union of India to produce the original file.

5. Today, Mr. Kamal Kant Jha, learned counsel for the Union of India produced the original file. It contains a 'Draft Order' signed by Mr. Dinesh Kakkar, the JS in question at the relevant time. However, there is no date below the signature of Mr. Kakkar. The date '20.8.2002' is written by hand on the left hand corner of the first page of the Draft Order. Also numerous corrections made in the Draft Order have not been initialled by him.

6. What is important is that the impugned order, certified copy of which has been issued to the Petitioner and which has been assailed in the present petition, is present in the file but without the signature of Mr. Kakkar. The end of the order only states “sd/-” with the name of

Mr. Dinesh Kakkar typed below. Below this to the left is the attestation of Mr. BAV Srinivasan, Under Secretary (RA).

7. The fact of the matter, therefore, is that the original file does not have the original of the impugned order signed by Mr. Kakkar.

8. It was urged by Mr. Kamal Kant Jha, on instructions from Mr. Shaukat Ali, Under Secretary (RA), who is present in the Court, that it is the practice followed consistently in the Department of Revenue that only the draft orders are signed by the Adjudicating Authority ('AA') and on that basis, certified copies of the final orders are issued to the parties. Therefore the draft order is, for all practical purposes, treated as the final order. According to Mr. Jha the word 'draft' is a mere appendage and it is in fact the final order.

9. The Court is unable to agree with the above submission. An AA who makes corrections to a draft order is statutorily obliged to ensure that he or she signs the final order and it is only thereafter that any other officer attest a copy of the said order to be the true copy of the original order. In other words, it is only after the final order in original is signed by the AA that a certified copy thereof can be issued to the parties.

10. If the practice in the Department of Revenue has been to the contrary, it is high time that such practice ceases. It should be done forthwith by issuing appropriate instructions.

11. As far as present case is concerned, the result is that there is no valid order passed on the Petitioner's revision application till date. The draft order dated 20th August 2002 which has no legal status, cannot be held to be a valid order disposing of the Petitioner's revision application. The said application has to be treated as still pending adjudication and disposal.

12. Resultantly, a direction is issued to the incumbent Joint Secretary in the Department of Revenue to adjudicate and finally dispose of the Petitioner's revision application in accordance with law, within a period of eight weeks from today, without in any manner being influenced by the Draft Order earlier passed.

13. Since nearly 14 years have elapsed, the said Joint Secretary shall afford the Petitioner an opportunity of being heard prior to passing a fresh order. The Joint Secretary will give the Petitioner at least a week's advance notice of the date of hearing.

14. With the above directions the writ petition is disposed of.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 20, 2016

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