

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 8455 of 2015 (F)

PETITIONER :

**NABEEL ANSARI, S/O.AHAMMED KOYA,
NAJA HOUSE, KAKKUR P.O., AGED 57 YEARS
NANMINDA VIA
KOZHIKODE DISTRICT REPRESENTED BY POWER OF
ATTORNEY HOLDER AHAMMED KOYA,
SON OF ABDURAHIMANKUTTY HAJI,
RESIDING AT NAJAF (HOUSE), P.O.PAVANDOOR,
NANMANDA, KOZHIKODE.**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS :

- 1. DEPARTMENT OF CUSTOMS, GOVERNMENT OF INDIA REPRESENTED BY
COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX, CALICUT COMMISSIONERATE,
MANANCHIRA, CALICUT - 673 001.**
- 2. JOINT COMMISSIONER OF CUSTOMS, DEPARTMENT OF CUSTOMS,
CALICUT - 673 647.**

**R1 & R2 BY ADV. SRI.JOHN VARGHESE,SC,
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A TRUE COPY OF THE JUDGMENT DATED 13/11/2014 PASSED BY THIS HON'BLE COURT IN WPC.NO.14071/2014.
- EXHIBIT P2: TRUE COPY OF THE NOTICE SERVED ON THE PETITIONER BY THE 2ND RESPONDENT DATED 01/12/2014.
- EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 18/12/2014 PASSED BY THIS HON'BLE COURT IN WA.NO.1964/2014.
- EXHIBIT P4: TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 16/12/2014.
- EXHIBIT P5: TRUE COPY OF THE LETTER DATED 18/12/2014 SENT BY THE COUNSEL FOR THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE PETITION FOR CROSS EXAMINATION SUBMITTED BY THE PETITIONER.
- EXHIBIT P7: A TRUE COPY OF THE ORDER DATED 30/01/2015 PASSED BY THE 2ND RESPONDENT IN EXT.P6 PETITION.
- EXHIBIT P8: TRUE COPY OF THE LETTER DATED 16/02/2015 SUBMITTED BY THE PETITIONER'S COUNSEL TO THE 2ND RESPONDENT.
- EXHIBIT P9: TRUE COPY OF NOTICE DATED 25/02/2015 SENT BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 8455 of 2015

Dated this the 18th day of March, 2015

JUDGMENT

The petitioner has approached this Court challenging the course and events pursued by the respondents in denying the opportunity sought for to cross examine the concerned witnesses as requested vide Ext.P6 leading to Ext.P7 order dated 30.1.2015. The learned counsel for the petitioner points out that there is violation of the principles of natural justice as well and much prejudice has caused to the petitioner because of the denial of cross examination of the concerned witnesses. This in turn is under challenge in this writ petition.

2. The learned standing counsel for the respondents submits that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It is stated that the proceedings were finalized by the 2nd respondent strictly in conformity with the statutory prescription also granting sufficient opportunity to verify, peruse the documents and to mould the case accordingly. Every aspect pointed out by the petitioner has

been meticulously considered before passing the impugned order. It is stated that no provision of law is violated under any circumstances nor is there any infringement of principles of natural justice. Reliance is also sought to be placed on the decision rendered by the Apex Court as per the decision reported in **Telestar Travels Pvt. Ltd. v. Special Director of Enforcement** 2013 (289) E.L.T 3 (S.C.). The observations as in paragraph '20' are in the following terms:

"20. Coming to the case at hand, the Adjudicating Authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants the Adjudicating Authority also placed reliance upon documents produced by Miss Anita Chortarni and Mr.Raut. These documents were, it is admitted disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination of the witnesses producing the documents cannot even on the principles of Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the

opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the Courts below. The third limb of the case of the appellants also in that view fails and is rejected.”

3. After hearing both the sides, this Court finds that the case put up by the petitioner is not liable to be entertained in view of the law declared by the Apex Court as per the decision cited supra. In the said circumstance, interference is declined and the writ petition is dismissed.

It is brought to the notice of this Court that the proceedings are still to be finalized and as per Ext.P7, only the opportunity to cross examine the witnesses alone has been rejected. In the said circumstance, the 2nd respondent is granted a further period of one month to finalize the proceedings.

**P.R. RAMACHANDRA MENON,
JUDGE.**