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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 7271/2017

RAJEEV MAYER

..... Petitioner

Through: Dr. G. K. Sarkar, Ms. Malabika Sarkar
and Mr. Prashant Srivastava, Advocates

versus

COMMISSIONER OF CUSTOMS (EXPORT)

..... Respondent

Through: Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Namrata Bharti, Advocate

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

22.08.2017

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C.M. No. 30117/2017 (exemption)

1. Allowed, subject to all just exceptions.

W.P. (C) No. 7271/2017 & C.M. No. 30116/2017 (interim relief)

2. This is a writ petition under Article 226 of the Constitution of India for setting aside the Adjudicating Order No. 93/2017 dated 31st May 2017 passed by the Additional Commissioner of Customs (Exports) [Adjudicating Authority ('AA')].

3. The short question involved in this petition is whether the Petitioner was provided an adequate opportunity of representing against the Show Cause

Notice ('SCN') dated 28th November 2013 issued to the Petitioner.

4. The AA fixed the matter at 11 am on 24th April 2017 for personal hearing. Admittedly, the notice of hearing was received by the Petitioner on that very date in the evening at around 4 pm. As a result, the Petitioner was unable to attend the hearing. Despite drawing the attention of the AA to this fact by letter dated 1st July 2017, the Petitioner's request for further hearing was declined and the impugned adjudicating order was passed by the AA *ex parte* on 31st May 2017.

5. The facts speak for themselves. The notice of hearing was received by the Petitioner on the very date of hearing at 4 pm, making it impossible for the Petitioner to appear before the AA. In the circumstances, the AA ought to have permitted one more opportunity of hearing to the Petitioner in the SCN proceedings.

6. For the above reasons, the impugned order dated 31st May 2017 is hereby set aside and the matter is restored to the file of the AA for a fresh disposal in accordance with law. The Petitioner is directed to appear either himself or through an Authorized Representative before the AA on 18th September 2017 at 3 pm.

7. In the meanwhile, if a request in writing is made by the Petitioner not later than one week from today, the documents requested by the Petitioner shall be provided to him by the Customs Department at least two weeks prior to the above date fixed before the AA.

8. The petition and pending application are disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 22, 2017
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