

ORDER SHEET

WPO 313 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CHANDAN CHATTERJEE
Vs.
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 4th August, 2021.

(Via Video Conference)

Mr. R.K. Chowdhary,
Mr. T.K. Mitra, Advs.
...for the petitioner
Mr. Y.J. Dastoor, Ld. Additional
Solicitor General
...for Union of India
Mr. Vipul Kundalia,
Mr. Tapan Bhanja, Advs.
...for Customs Authority
Mr. K.K. Maiti, Adv.
...for respondent no. 2

The Court: Heard learned advocates appearing for the parties.

Petitioner's fact in short in this matter is that the petitioner is a Customs House Agent and he is aggrieved by the impugned orders of prohibition and suspension being annexures P7 and P8 to the writ petition. From the impugned order of suspension dated 19th July, 2021 it appears that as per regulation 16(2) of the Customs Brokers Licensing Regulations, 2018, an opportunity was given to the petitioner or his authorised representative for post-suspensional hearing which was fixed on 28th July, 2021 at 2.30 P.M. Petitioner did not comply with that notice and not participated in the said proceeding and has challenged the aforesaid impugned order dated 19th July, 2021 on the ground of jurisdiction of the authority inter alia on merit and violation of principles of natural justice.

Learned Additional Solicitor General appearing for Union of India and Mr. Kundalia appearing for the respondent Customs Authority have opposed

this writ petition by contending that the impugned order is appealable and that the petitioner was already given opportunity of hearing in compliance of the principles of natural justice but the petitioner did not avail the same. Case of the petitioner in the writ petition is that alternative remedy is no bar if a proceeding is without jurisdiction.

Considering the submissions of the parties, I am of the view that this case does not fall under those type of cases of lack of jurisdiction and that it cannot be adjudicated by the Adjudicating Authority. Had it been a case of constitutionality or vires, the matter would have been different or the Authority had not provided at all any opportunity of hearing. In this case though pre-decisional hearing has not been provided but post-decisional hearing has been provided which is permissible under the law and it has not been denied by both the parties that post-decisional hearing is permissible in the facts of the case.

I am of the view that there is no statutory bar against the respondent Authorities in deciding the case of the petitioner on the point of jurisdiction apart from merit of the case.

In view of the discussion made above, I am of the view that there is still a scope by the Authority to adjudicate the case of the petitioner on merit as well as on the point of jurisdiction and where the impugned proceeding is still pending and the Authority has not reached to its final conclusion, it will not be proper on the part of the Writ Court to interfere in the matter at this stage.

Accordingly, I am disposing this writ petition by refixing the date of hearing before the Principal Commissioner of Customs (A & A), Customs House, Kolkata on 9th August, 2021 at 2.30 P.M. and this order should be treated as notice to the petitioner and no further notice will be given by the respondent. I keep all the points open before the respondent Authority which

has been raised by the petitioner in this writ petition including the point of jurisdiction.

Needless to mention that in course of the proceeding respondent will observe principles of natural justice by giving complete and effective opportunity of hearing and shall allow the petitioner to have access to the document upon which the respondent wants to rely by way of inspection. The respondent concerned will conclude the proceeding and pass final order within ten days from the date of hearing. It is expected that the proceeding will be completed within the time bound fixed by this Court without granting any unnecessary adjournment to the parties. It is recorded that this Court has not gone into the merits of the case and the respondents are free to decide the case of the petitioner on its own merit and strictly in accordance with law.

WPO 313 of 2021 is accordingly disposed of.

(MD. NIZAMUDDIN, J.)

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