

ORDER SHEET
WPO/530/2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. AYUSHI LOGISTIC CO. AND ANR.
Versus
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 7th September, 2021

Appearance:
Mr. Arijit Chakrabarti, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
...for petitioners
Mr. Sujit Mitra, Adv,
... for respondent no.1
Mr. Sandip Choraria, Sr., Adv.
Mr. Abhradip Maity, Sr. Adv.
...for respondent nos. 2 to 5

The Court : Pursuant to my order dated 6th September, 2021, learned counsel appearing for the Customs Authority, who was asked to produce the record relating to second enquiry report dated 14th June, 2021, which was challenged by the petitioner in this writ petition on the ground that the Principal Commissioner of Customs, after submission of the first enquiry report and filing of objection against that and holding a hearing, he has no jurisdiction for asking for second enquiry report, has produced the record. With regard to second enquiry report learned advocate appearing for the Customs Authorities when he was asked by me as to under which provision of law the Principal Commissioner of Customs has asked for second enquiry report, he has relied on the provision of 17(7) of Regulation of Customs Brokers Licensing Regulations, 2018. On perusal of said regulation, I find that nowhere this regulation confers power

upon the Principal Commissioner of Customs for asking for a second enquiry report.

Learned counsel appearing for the Customs also could not demonstrate from the record as to what was the reason for asking for submission of second enquiry report and particularly without passing a formal order of rejection or discarding of the first enquiry report. It is submitted on behalf of the respondent Customs Authority that after submission of the first enquiry report, the enquiry officer was transferred. I failed to understand what difference it will make when the first enquiry report is a part of the record thereafter whether enquiry officer is posted there or transferred, how does it make any difference and more so when the Principal Commissioner has not rejected or discarded the first enquiry report by a specific formal order.

Learned counsel appearing for the Customs Authority could not justify such action of the respondent from any provision of law and in my view, such action of the respondent Principal Commissioner of Customs taking shelter under Regulation 17(7) of the Customs Brokers Licensing Regulations, 2018 to justify his action of asking for second enquiry report, without discarding or rejecting first enquiry report of his own department's officer and without passing any formal order having no authorisation under any provision of law for such action, and such action of the Principal Commissioner of Customs is invalid and illegal. However, this order will not prevent the Principal Commissioner of Customs to proceed in accordance with law on the basis of first enquiry report. Learned counsel appearing for the petitioner has submitted that he has no objection with regard to any proceeding on the basis of first enquiry report and pass any final order in accordance with law.

So far as the second impugned enquiry report is concerned, the same stands quashed.

It is recorded that this Court has not gone into the merit either of the first enquiry report or the objection of the petitioner against the first enquiry report.

W.P.O. No. 530 of 2021 is disposed of accordingly.

(MD. NIZAMUDDIN, J.)

sb.