ORDER OD—3

APOT/155/2021
WITH
WPO/256/2018
I.A. NO: GA/1/2021
GA/2/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

M/S. MSC AGENCY (INDIA) PRIVATE LIMITED & ANR.
VERSUS
UNION OF INDIA & OTHERS

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

DATE : 3rd December 2021.

APPEARANCE:

Mr. Suddhasatva Banerjee, Advocate,
Mr. Sayan Ganguly, Advocate,
Ms. Mudrika Khaitan, Advocate
......for the appellants.

Mr. B.P. Banerjee, Advocate,
Mr. Tapas Bhanja, Advocate
.....for the respondents.

Mr. Vipul Kundalia, Advocate,
Ms. Samridhi Majumder, Advocate
Mr. Anurag Roy, Advocate
......for the Union of India.

The Court:- Affidavit of service has been filed by learned counsel for the appellants.

This appeal is directed against the order of the Learned Single dated 4th August 2021 whereby W.P.O. 256 of 2018 has been disposed of observing that alternate remedy of appeal is available against the order under challenge and granting liberty to the appellants to approach the Tribunal.

Submission of learned counsel for the appellants is that since the order of assessment under challenge before the Learned Single Judge was passed without giving opportunity of hearing to the appellants, therefore, petition ought to have been maintained. As against this, learned counsel for the respondents has submitted that due opportunity of hearing was given to the appellants by the original authority while passing the order under challenge, therefore, the appellants are not justified in raising the issue of denial of principal of natural justice.

An issue has also been raised by learned counsel for the appellants that the objection relating to availability of alternate remedy stood closed by the order of the Learned Single Judge dated 27th September 2018, but on the perusal of the said order, we find that the Learned Single Judge had not closed that issue.

The Learned Single Judge, while passing the impugned order, has duly taken note of Section 129A of the Customs Act, 1962 wherein the appellants have the remedy of appeal against the original order dated 28th February 2018 passed by the Commissioner of Customs. This aspect has not even been disputed before this Court. So far as the issue of passing the order by the Commissioner of Customs without complying with the principle of natural justice is concerned, paragraph 23 of the order of the Commissioner of Customs clearly reveals that due opportunity of hearing was given to the appellant.

A submission has been made by learned counsel for the appellants that when the appellants had appeared before the Commissioner of Customs on 18th January 2018, no further date was informed and the proceedings thereafter were taken up in their absence. Paragraphs 4(d) and 4(e) of the affidavit in opposition filed on behalf of respondent Nos.2, 6 and 7 before the Learned Single Judge reveals that notice dated 18th January 2018 informing the next date was duly sent by speed post in terms of Section 153(3) of the Act.

In view of this, the submission of learned counsel for the appellants that the impugned order has been passed by the Customs Authority without complying with the principle of natural justice cannot be accepted. Hence, we find no error in the order of the Learned Single Judge granting liberty to the appellants to avail the remedy of appeal. No case for interference with the order of the Learned Single Judge is made out.

The appeal is accordingly dismissed. Pending IAs are also dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)

sm / s.kumar