

OD 3

ORDER SHEET

WPO 1208 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S TROPICAL LABORATORY AND ANR
Vs.
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 14th December, 2021.

(Via Video Conference)

Mr. N.K. Chowdhury,
Mr. Arijit Chakrabarti,
Mr. Nilotpal Chowdhury,
Mr. Prabir Bera, Advs.
... for the Petitioner
Mr. Ravi Ranjan Kumar, Adv.
...for respondent no. 1
Mr. Bhaskar Prosad Banerjee,
Mr. Abhradip Maity, Advs.
....for Customs
Mr. Debashis Saha,
Ms. Dipika Banu,
Ms. Namarata Chatterjee,
Mr. Souvik Dian, Advs.
...for respondent no. 6

The Court: Heard the learned advocates appearing for the parties.

This writ petition has been filed by the petitioner being aggrieved by the action of the respondent Central Excise Authority taking coercive recovery action against the alleged arrears and making attempt to recover the alleged amount of arrears from the bank account in question of the petitioner. Main ground of challenge of the

impugned action of the respondent authorities concerned is on the ground that the purported adjudication order was never served upon the petitioner in compliance of the formalities under Section 37C of the Central Excise Act.

Mr. Banerjee learned advocate appearing for the respondent when asked to take instruction in the aforesaid record with regard to the service of the adjudication order in compliance of Section 37C of the Act he submits the instruction from which it appears that the authority themselves have admitted that the purported adjudication order on the basis of which impugned recovery action has been taken, was sent through ordinary post while Section 37C of the Act says that any decision or order passed shall be sent to the person concerned by registered post with acknowledgement due or by speed post with proof of delivery or by courier approved by Central Board of Excise and Customs and in this case prima facie it appears that none of the conditions of service under Section 37C was complied with.

Learned advocate appearing for the petitioner also submits that petitioner is agreeable to file appeal against the adjudication order out of which the demand in question arises if the same is served upon him in accordance with law.

In response to such submission Mr. Banerjee learned advocate appearing for the respondent revenue authorities submits that he will hand over a copy of the original adjudication order upon the learned advocate-on-record of the petitioner within seven days from date.

As per the submission of Mr. Banerjee, learned advocate that he will serve a copy of the adjudication order in question within seven days from date upon the learned advocate-on-record for the petitioner who on receipt of the same will file an appeal before the appellate forum in accordance with law within 60 days.

It is recorded that if the petitioner does not file the appeal within the statutory period, impugned recovery order shall be revived.

Considering the facts appear from record and submissions of the parties, I am of the view that keeping the writ petition pending will be a futile exercise and it can be disposed of at the motion stage itself.

Accordingly, this writ petition being WPO 1208 of 2021 is disposed of by setting aside the impugned recovery order dated 17th November, 2021 being annexure P-10 to the writ petition.

Mr. Banerjee submits that since no affidavit has been filed in the matter, no allegation which is contrary to record should be deemed to have been admitted.

Instruction submitted by Mr. Banerjee from his client which is filed in Court be kept with the records.

(MD. NIZAMUDDIN, J.)

