

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7885 OF 2021

Shri Prem Chand, Proprietor of Mahi Exports and Anr.	}	
versus	}	Petitioners
Union of India and Ors.	}	Respondents

**WITH
WRIT PETITION NO. 7890 OF 2021**

Samisa Creations Pvt. Ltd. and Ors.	}	
versus	}	Petitioners
Union of India and Ors.	}	Respondents

Mr. Brijesh Pathak for the petitioners.

Mr. J. B. Mishra with Ms. Maya Mujumdar and
Ms. Kavita Singh for the respondents.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- NOVEMBER 23, 2021

PC :-

WP No. 7885 of 2021:

1. Order dated 30th March 2021 passed by the Joint Commissioner of Customs, Precious Cargo Customs Clearance Centre, APSC, ACC, Mumbai-III under section 28 of the Customs Act, 1962 (hereafter "the Act", for short) is under challenge in this writ petition dated 20th April 2021.

2. Admittedly, an appeal lies against the impugned order. However, the writ jurisdiction of this Court is invoked on the ground that the impugned order has been passed by an officer who lacks jurisdiction and also that the same suffers from breach of principles of natural justice.

3. Mr. Pathak, learned advocate appearing for the petitioners concedes that in the reply to the show-cause notice dated 15th March 2019, the petitioners never objected to the jurisdiction of the officer who issued the notice. If the petitioners had so objected to the authority of the concerned officer to even investigate facts, he would have been under an obligation to deal with such objection. Having not invited a decision on the question of jurisdiction, we are loath to allow the petitioners to raise the point of jurisdiction for the first time before this Court after the final order has been passed in the proceedings.

4. Insofar as the ground of breach of principles of natural justice is concerned, it is not a case where the petitioners were never afforded an opportunity of hearing. From para 9 (nine) of the writ petition, we find that notice was issued to the petitioners but their grievance is that time given to appear and represent their case was not sufficient. A distinction has to be made between a case where an order is passed "without notice"/"without opportunity" and a case where an order is passed "without proper notice"/"without reasonable opportunity". Since the case of the petitioner does not fall within the first category, it is not a clear case of breach of the *audi alteram partem* rule.

5. The other point raised by Mr. Pathak is that the reply to the show-cause notice has not been dealt with appropriately. We do not see reason to hold that this, by itself, would constitute violation of principles of natural justice so as to derail the procedure prescribed by the Act for redressal of grievances against an order passed by the adjudicating authority.

6. In view of the above and having regard to the alternative remedy available to the petitioners under the Act, we find no reason to entertain this writ petition. The same stands dismissed, without costs.

7. However, the petitioners shall be at liberty to pursue the appellate remedy in accordance with law. Since the writ petition was pending on the file of this Court from 20th April 2021 till date, the petitioners may seek exemption from the laws of limitation.

WP No. 7890 of 2021:

Since the grievance expressed in this writ petition is covered by the order passed by us today in Writ Petition No. 7885 of 2021, this writ petition stands dismissed with similar observations/liberty.

SALUNKE
J V

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by SALUNKE J V
Date: 2021.11.24
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)