

01-03-2022
Item No.14
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.1804 of 2022
Deepak Kishanchand Sajnani
-vs-
Commissioner of Customs (Preventive), West Bengal,
Kolkata

Mr. Moinak Bose
Mr. Neeraj Kumar Pandey
Mr. S.M. Akhter ...for the petitioner

Mr. Somnath Ganguli
Ms. Sukalpa Seal ...for the respondent

Heard learned counsel appearing for the parties.

In this writ petition, petitioner has challenged the impugned adjudication proceedings on the grounds of violation of principle natural justice by not allowing the him to cross-examine the witnesses upon whose statements the respondent-adjudicating authority has relied against the petitioner.

It is the basic principle of any adjudication and in inquiry proceedings that if an authority in any proceedings wants to rely on any piece of evidence or on the statement of any witness causing prejudice to a person or having adverse effect on a person, that person has a right to cross-examine and has a right to access to the material upon which the authority wants to rely in any proceedings. Petitioner is further aggrieved by impugned notice of the respondent-adjudicating authority asking the petitioner to furnish in advance questions to be asked in cross-examination.

In this case, admitted position is that, which appears from the impugned order of adjudicated dated

December 7, 2021, the adjudicating authority has relied on the statements of the witnesses in question and that the petitioner was denied to cross-examine those witnesses.

The petitioner in support of his contention has relied on a decision of the Supreme Court in the case of *Andaman Timber Industries –vs- Commissioner of Central Excise, Kolkata-II*, reported in (2016) 15 SCC 785, particularly para.6 of the aforesaid decision which is quoted below:–

“According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.”

Learned advocate appearing for the respondent could not contradict the aforesaid facts which appear from record, particularly from the adjudication order itself that in the instant case, statements of the witnesses in question were relied in passing the impugned adjudication order, but the petitioner was not afforded opportunity to cross-examine those witnesses.

Considering the submission of the parties and also the cited decision of the Supreme Court in *Andaman*

Timber Industries case (supra), this writ petition being **WPA No.1804 of 2022 is disposed of** by setting aside the impugned order dated December 7, 2021 to the extent of relying on the statements of the witnesses in question wherein the petitioner was denied to cross-examine those witnesses, and the adjudicating authority shall pass a fresh order in accordance with law as a consequence of this order.

It is clarified that if the respondent-adjudicating authority wants to rely on the statements of the witnesses in question, in that event he will have to afford an opportunity to the petitioner to cross-examine those witnesses.

[Md. Nizamuddin, J]