

OD 24

ORDER SHEET

WPO 76 of 2017
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GAYATRI DAS
Vs
COMMISSIONER OF CUSTOMS (PREVENTIVE) & ANR.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 24th February, 2022

(Via Video Conference)

Mr. Saumya Majumder,
Mr. Manoj Malhotra,
Mr. Ravi Kr Dubey, Advs.
...for the petitioner
Mr. Somnath Ganguly,
Mr. Bhaskar Prosad Banerjee, Advs.
..for Customs
Mr. Kaushik Dey, Adv.
...for respondent no. 2

The Court: Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order of adjudication dated 11th July, 2016 only on account of imposition of penalty confiscating the car in question which belongs to the petitioner under Section 115(2) of the Customs Act without giving any opportunity of hearing or without providing any scope to prove that the car in question was used without the knowledge and connivance of the owner/petitioner. Opportunity was given to the respondents to take appropriate instruction or place relevant records to show that any opportunity was provided to the petitioner as per Section 115(2) of the Customs Act before imposing punishment of

confiscation that the car in question was used/involved in the alleged offence without the knowledge or connivance of the petitioner.

Mr. Ganguly, learned advocate appearing for the respondent Customs Authority could not satisfy this Court from record or any specific instruction based on any material on record that in the instant case compliance of formalities under Section 115(2) was made in the case of the petitioner by providing the petitioner scope to prove that for alleged offence her car in question was used without her knowledge or without any connivance on her part.

For the sake of convenience, Section 115(2) of the Customs Act, 1962, is quoted hereinbelow :

“115. Confiscation of Conveyances : 1)

2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal :

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market-price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation – In this Section, “market price” means market price at the date when the goods are seized.”

Considering the submissions of the parties the impugned adjudication order dated 11th July, 2016 is partially set aside to the extent of the part of the order confiscating the car in question of the petitioner and remanding the matter back to the adjudicating authority on this limited issue as appears in serial no. 2 of the adjudication order of punishment and to pass a fresh adjudication order in accordance with law after giving opportunity of hearing to the petitioner or her authorised representative within eight weeks from the date of communication of this order.

It is recorded that this partial setting aside of the impugned order to the extent made above is without going into the merit of the case and it has been set aside only on the ground of violation of principles of natural justice and non-compliance of formalities under Section 115(2) of the Customs Act.

With these observations and directions, this writ petition being WPO 76 of 2017 is disposed of.

(MD. NIZAMUDDIN, J.)

