

OD – 25

ORDER SHEET
WPO/334/2017
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUNIL KUMAR MITRA
VS
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 24TH FEBRUARY, 2022.

Appearance:
Mr. Proytush Chatterjee, Adv.
...for the petitioner

Mr. Somnath Ganguli, Adv.
Ms. Sabnam Basu, Adv.
Ms. Priyamvada Singh, Adv.
Ms. Aishwarya Rajyashree, Adv.
...for the respondents.

The Court: In this matter, the petitioner has challenged the impugned order of the Appellate Authority/Commissioner of Customs (Appeal), dated 28th February, 2017 confirming the adjudicating orders in question mainly on the ground of violation of principle of natural justice by the adjudicating authority by not providing the documents to the petitioner upon which the adjudicating authority relied in passing the order of adjudication in question adverse to the interest of the petitioner and not providing the petitioner his legal rights to cross-examine those witnesses on

whose statement the adjudicating authority has relied and taken into consideration at the time of passing the adjudication order in question.

In this regard, petitioner has taken specific ground in his memorandum of appeal filed before the Appellate Authority, particularly Ground Nos. IX and XIII which are as follows:

- IX. The appellant, upon receipt of the intimation of personal hearing, appeared before the Learned Adjudicating authority and requested to provide all the documents to the appellant including the copies of the statements recorded from the appellant given before the officer investigating the cases about 11 years back so that the appellant could present the case effectively. The appellant states that the department did not provide the documents sought for and on the other hand, in order to save their default and laches, had been issuing notices for attending personal hearing one after another without complying with the request made by the appellant. The appellant, on self same cases had also requested the department vide his letter dated 01.10.2012 for providing the documents for submission of reply after perusal of the same and prayed that the personal hearing be fixed thereafter.*
- XIII. For that the Learned Adjudicating authority also failed to appreciate that had the appellant been provided with the documents before the personal hearing fixed for the same, the appellant would have got the chance for cross examination of the witnesses and the persons, whose statements had been relied upon by the Learned Adjudicating authority and could give his explanation effectively.*

Petitioner is also aggrieved by the aforesaid impugned order of the Appellate Authority for passing a non-speaking order without dealing with the aforesaid grounds which were specifically taken by the petitioner.

Mr. Ganguli, learned Advocate appearing for the respondents could not convince this Court from his submission and also could not produce any record to contradict the allegation of the petitioner that in the instant case no opportunity was given to cross-examine the witnesses in question and that petitioner was not provided with the document upon which adjudicating authority has relied at the time of passing of the impugned adjudicating order and the grounds indicated above which were not dealt with by the Appellate Authority.

On perusal of the impugned order of the Appellate Authority, I find that the Appellate Authority has not considered and specifically dealt with particularly the aforesaid two grounds in his order and it can be said that the impugned order is a non-speaking order in this regard even without going into the merits of the case.

Considering the submission of the parties and admitted position which appears from record, I am of the view that in this case there was violation of principle of natural justice and the impugned order of the Appellate Authority is a non-speaking order on the aforesaid grounds taken by the petitioner in its memorandum of appeal filed before the Appellate Authority and accordingly, the impugned order dated 28th February, 2017 is

set aside and remanded back to the Appellate Authority concerned on these two limited issues/grounds, which are non providing of documents to the petitioner upon which adjudicating authority has relied and denying the petitioner to cross-examine the witnesses in question on whose statement adjudicating authority has relied in its adjudication order.

It is clarified that the impugned order of the Appellate Authority is set aside and remanded only on these two issues and the rest of the order, the Court is not inclined to interfere but of course it will be subject to final outcome of adjudication on the aforesaid two formalities of providing the documents relied by the adjudicating authority and upon the cross-examination of the witnesses upon whose statement adjudicating authority has relied.

It is expected that the Appellate Authority will conclude and pass a final order within six months from the date of the communication of this order.

With these observations and directions, this writ petition being WPO No. 334 of 2017 stands disposed of without any order as to costs.

(MD. NIZAMUDDIN, J.)