

OD – 9

ORDER SHEET
WPO/324/2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. PROMISING EXPORTS LTD AND ANR
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 9th June, 2022.

Appearance:

Mr. Arijit Chakrabarti, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
...For the Petitioner

Mr. Vipul Kundalia, Adv.
Mr. Tapan Bhanja, Adv.
Mr. Anurag Ray, Adv.
...For Respondent nos. 1 and 2

Mr. Rajashree Venket Kundalia, Adv.
Ms. Ekta Sinha, Adv.
...For Customs Authorities

The Court : Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned adjudication order dated 13th December, 2017 passed by the Development Commissioner, Falta Special Economic Zone by acting as a Customs Officer on the basis of implementation of the order of this Court dated 23rd June, 2010 in WP 768 of 2010 and the order of Commissioner of Customs (Appeals) dated 24th April, 2018 against the said order of the Development Commissioner dated 13th December, 2017, dismissing the appeal of the petitioner on the ground that since Development Commissioner is not lower in rank than him he could not decide such appeal. Legal position is that the Development Commissioner is not the adjudicating authority under the Customs Act to pass such adjudication

order. But the factual and legal position remains that Development Commissioner has passed the impugned adjudication order on 13th December, 2017 not in exercise of any power under the statute and he has exercised this power in compliance and implementation of the order of this Court. Though this factual and legal position that Commissioner of Customs (Appeals) is equal in rank of the Development Commissioner and as such he cannot act as an Appellate Authority over the order passed by an officer who equal in rank as of him but the exceptional circumstances which has arisen in this case is that for the redressal of the grievance and remedy against the order of the Development Commissioner which is the appellate forum for the petitioner ? Commissioner of Customs (Appeals) has done nothing wrong legally in not entertaining the appeal against the order of the Development Commissioner. In view of this exceptional circumstances that Development Commissioner has passed the adjudication order in compliance and implementation of the order of this Court dated 23rd June, 2010 by which he was asked to pass adjudication order and such order of this Court was not challenged by any of the parties I am of the considered opinion that since the Commissioner of Customs has refused to entertain the Appeal, Customs, Excise and Service Tax Appellate Tribunal should entertain the appeal against the impugned order of the Development Commissioner who is equal in rank of the Commissioner by treating it as an order of Commissioner of Customs and shall decide the matter on merit and in accordance with law.

Petitioner is granted liberty to file appeal against the impugned order of the Development Commissioner, before the Tribunal within four weeks from date and if such appeal is filed by the petitioner within the time stipulated herein, issue of limitation shall not be raised.

It is further recorded that this Court has not gone into the merit of the original adjudication order passed by the Development Commissioner and the learned Tribunal shall decide the same strictly in accordance with law.

This order should not be treated as a precedent in future since this order has been passed due to extraordinary and exceptional facts and circumstances that the order of the Development Commissioner was passed on the basis of the order of this High Court.

With these observations and directions, this writ petition being WPO 324 of 2018 stands disposed of.

(MD. NIZAMUDDIN, J.)

