

ORDER SHEET

WPO/2856/2022  
IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

KRISHNA TISSUE PVT LTD  
VS  
PRINCIPAL COMMISSIONER OF CUSTOMS (PORT) AND ORS.

BEFORE:  
The Hon'ble JUSTICE MD. NIZAMUDDIN  
Date: 8<sup>th</sup> December, 2022.

Appearance:  
Mr. Sudhir Mehta, Adv.  
Mr. Anurag Bagaria, Adv.  
Ms. Riya Debnath, Adv.  
...For the Petitioner

Mr. Bhaskar Prosad Banerjee, Adv.  
Mr. Tapan Bhanja, Adv.  
...For the Customs Authority

The Court: Heard learned advocates appearing for the parties.

This writ petition has been filed by the petitioner being aggrieved by inaction on the part of the respondent Customs Authority in considering and disposing of its representation dated 5<sup>th</sup> August, 2022 being annexure P-5 to the writ petition for provisional release of seized goods in question, under Section 110A of the Income Tax Act, 1961 and petitioner has also challenged the impugned show cause notice dated 21<sup>st</sup> September, 2022, under Section 124 of the Customs Act, 1962. Petitioner submits that it has got a legal right under Section 110A of the Customs Act for provisional release on terms and conditions referred in the said section which according to the petitioner, the respondent Customs Authority have ignored and violated by not considering the said representation till date and instead of first disposing the said representation, the respondent Customs Authority

concerned in biased mind have issued the impugned show cause notice to the petitioner making the aforesaid representation infructuous.

Mr. Banerjee, learned advocate appearing for the respondent Customs Authority opposes this writ petition by defending the inaction on the part of the respondent Authority concerned in disposing of the aforesaid representation by saying that since the show cause notice has already been issued subsequently the said representation cannot be considered. Such submission of Mr. Banerjee is not acceptable since the respondent Customs Authority being 'State' under Article 12 the Constitution of India cannot sit over the representation and take such an adamant stand of not considering and disposing the representation of the petitioner. It is not that the said Authority has to always consider the representation of the petitioner in a positive manner or in favour of the petitioner but they cannot act in such fashion and sit over the representation of the petitioner, they could have rejected it by cogent reason and by passing a reasoned and speaking order in accordance with law.

So far as the question of interference with the impugned show cause notice is concerned, that is premature at this stage since reply to the same filed by the petitioner is still pending and is still waiting for consideration by the Authority concerned.

In my considered view respondent Authority concerned being 'State' within the meaning of Article 12 of the Constitution of India cannot sit over the representation of the petitioner and take a stand that it cannot dispose the same since subsequent to seizure it has issued the impugned show cause notice.

Considering the facts and circumstances of this case and submissions of the parties, this writ petition being WPO 2856 of 2022 is disposed of by directing the respondent Customs Authority concerned to consider and dispose of the aforesaid representation of the petitioner in accordance with law and by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authorised representative within seven days from the date of communication of this order and subsequently the respondent Customs Authority concerned shall take a final decision on the reply to the aforesaid impugned show cause notice expeditiously and preferably not beyond four weeks after the disposal of the aforesaid representation.

It is recorded that this Court has neither gone into the merit of the aforesaid representation nor reply to the impugned show cause notice and the Authority concerned shall free to consider the same strictly in accordance with law.

(MD. NIZAMUDDIN, J.)

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