

AFR

HIGH COURT OF ORISSA : CUTTACK.

I.A. No. 6274 of 2022

(an application under Chapter-VI, Rule 27(a)
of the Odisha High Court Rules, 1948,
being filed on 10.05.2022)

in

W.P.(C) No. 4662 of 2022

(in the matter of an application under
Articles 226 & 227 of the Constitution of India, 1950,
disposed of on 17th February, 2022)

***SHRI K. SATISH KUMAR SUBUDHI* ...**
SON OF LATE K. PRASADA RAO
SUBUDHI

Petitioner

Mr. Jagamohan Pattanaik,
Advocate for the petitioner

-versus-

***UNION OF INDIA & OTHERS* ...**

Opposite Parties

Mr. Radheyshyam Chimanka,
Senior Standing Counsel
(CGST, Central Excise & Customs)
for opposite party No. 4
with Sri Biswanath Jena,
Superintendent (Appeal),
Central Excise, Customs & Service Tax,
Bhubaneswar

Date of Hearing: 24.08.2022 :: Date of Judgment : 24.08.2022

P.T.O.

CORAM:

MR. JUSTICE JASWANT SINGH
AND
MR. JUSTICE MURAHARI SRI RAMAN

JUDGMENT

Murahari Sri Raman, J.—

This matter is taken up by virtual/physical mode.

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

— Martin Luther King Jr.

These words from *Martin Luther King, Jr.* are reminder to the effect that we all have responsibility to take a stand when we witness injustice.

2. This Court wishes to proceed with the context which is brought to the notice of this Court by way of an Interlocutory Application seeking to exercise power under Article 227 of the Constitution of India, 1950 to enforce writ of *mandamus* issued while disposing of the writ petition being W.P.(C) No.4662 of 2022 *vide* Order dated 17.02.2022.
- 2.1. In *Estralla Rubber Vrs. Dass Estate (P) Ltd., (2001) 8 SCC 97* the scope and ambit of Article 227 of the Constitution of India has been succinctly propounded as follows:

- “6. *The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.*
7. *This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd Vrs. Ram Tahel Ramnand and Ors., AIR 1972 SC 1598 in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh & Anr. Vrs. Amarnath & Anr., 1954 SCR 565. This Court in Babhutmal Raichand Oswal Vrs. Laxmibai R. Tarte and Anr., AIR 1975 SC 1297 has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction*

under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal.”

2.2. In *Reepak Kansal Vrs. Union of India*, (2021) 9 SCC 251 it has been enunciated as follows:

“26. However, at the same time, if the statutory authority/authority has failed to perform its statutory duty cast under the statute or constitutional duty, a mandamus can be issued directing the authority to perform its duty cast under the statute. In such a situation, the Court would be absolutely justified in issuing a writ of mandamus directing the authority to perform its statutory duty/constitutional duty.”

2.3. It is by now well-established that the power under Article 227 of the Constitution of India is exercised to keep the subordinate courts within the bounds of their authority, thus, this power is to be used sparingly. The chief grounds available for the High Court to interfere with the orders of Courts/Authorities under Article 227 of the Constitution of India are:

- i. When the subordinate Courts/Authorities act arbitrarily;
- ii. When the subordinate Courts/Authorities act in excess of the Jurisdiction vested in them;
- iii. When the subordinate Courts/Authorities fail to exercise jurisdiction vested in them.

The High Court should not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law

could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

2.4. Taking into account the fact that on 17th February, 2022, *i.e.*, the date of issue of writ of *mandamus* in W.P.(C) No.4662 of 2022 to consider the petition for cross-examination before passing the final order in appeal, the Appellate Authority having shown undue haste in passing the final Order-in-Appeal on the very date when the matter was being taken up in this Court, it is deemed proper to exercise power under Article 227 of the Constitution of India. Mr. Radheyshyam Chimanka, learned Senior Standing Counsel for the CGST, Central Excise and Customs fairly conceded and agreed for setting aside the Order-in-Appeal dated 17.02.2022 and remand the matter for hearing of the application dated 09.02.2022 for issue of summons for cross-examination of witnesses and the appeal afresh on merits.

3. The Petitioner had filed the afore-noted writ petition craving for following reliefs:

“Under the aforesaid facts and circumstances, the petitioner most humbly and respectfully prays that the Hon’ble Court may graciously be pleased to remove the injustice caused to the petitioner in the decision making process of the matter by declaring the Order No. CC(P)/BBSR/CUS/No.17 dated 18.10.2019 (Annexure-8) is void ab initio and non est in the eyes of law and accordingly be pleased to quash the same;

Alternative, be pleased to direct the opposite party No.4 to dispose of/conclude the matter pending with him by taking into

consideration the prayer of the petitioner in application dated 09.02.2022 (Annexure-9) within a stipulated period to be fixed by this Hon'ble Court;

*And to pass any other order/orders as would be deemed fit and proper in the circumstances of the case; ***"*

4. This Court having declined to interfere with the Order-in-Original bearing CC(P)/ BBSR/ CUS/ No.17/ JOINT COMMISSIONNER/ 2019, dated 04/18.10.2019 (Annexure-8), while disposing of the writ petition with the consent of both the counsel for the parties passed the following Order on 17th February, 2022:

- "1. This matter is taken up by virtual/physical mode.*
- 2. The Petitioner has come up before this Court with a prayer for consideration of the application dated 9.02.2022 vide Annexure-9 by the Opposite Party No.4 (Appellate Authority).*
- 3. The short fact adumbrated in the present writ application is that the Petitioner vide order dated 4.10.2019 passed by the Joint Commissioner, Customs (Preventive) Commissionerate, Bhubaneswar was imposed with penalty U/s 112 of the Customs Act, 1962, in respect of confiscation of twenty pieces of gold biscuits weighing 2332.800 gms valued at Rupees 11,03,414.40. Against the said order, the Petitioner filed an appeal before the Commissioner (Appeals) CGST, Central Excise and Customs, Bhubaneswar. The Petitioner also filed an application dated 09.02.2022 for examination and cross-examination of the witnesses and sought for confrontation.*
- 4. It is alleged by the Counsel for the petitioner that before passing order dated 4.10.2019, the Joint Commissioner, Customs (Preventive) Commissionerate, Bhubaneswar, though relied on statements of certain persons, has not given opportunity to the petitioners to cross-examine. In the writ petition, the Petitioner seeks for a direction to the*

Appellate Authority for consideration of said application before finalizing the said appeal.

5. *Heard Sri. J.M. Pattnaik, learned counsel appearing for the Petitioner and Sri. R.S. Chimanka, learned Standing Counsel for Customs.*
6. *Both the counsels during the course of hearing **agreed for disposal of the writ petition with a direction to the Appellate Authority for consideration of application dated 9.02.2022 (Annexure-9) filed in appeal pending adjudication.***
7. *Accordingly, on the basis of a consent of both the parties, we dispose of the writ petition with a direction to the Opposite Party No. 4 (Appellate Authority) to consider the application dated 9.02.2022 vide Annexure-9 and take a decision in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter and it is left open to the Appellate Authority to take a decision on the application dated 9.02.2022 (Annexure-9) based on material relied upon by Adjudicating Authority either prior or while passing of final order in the appeal in accordance with law.*
8. *With the aforesaid direction, the writ petition is disposed of.”*

[Emphasis supplied]

5. Mr. Jagamohan Pattanaik, Advocate for the petitioner-applicant submitted that:

- i. The petitioner's father Late K. Prasada Rao Subudhi as proprietor of M/s. Shankar Jewellers, Big Bazar, Gouda Street, Berhampur in the district of Ganjam while filing Appeal under Section 128 of the Customs Act, 1962 read with Rule 3(1) of the Customs Appeal Rules, 1982, before the Commissioner (Appeals), Customs, Bhubaneswar

enclosed a petition praying therein for affording opportunity of cross-examination which was not granted by the Adjudicating Authority.

- ii. On 25.01.2021, i.e., the date of hearing before the Commissioner (Appeals), said Late K. Prasada Rao Subudhi had filed written submission specifically *inter alia* stating thus:

“On 27.02.2017 at the instance of the department the appellant withdrew O.J.C. No.2045 of 2000 for early disposal though there was no stay on adjudication and on 25.11.2019 the appellant got the OIO where cross-examination of the relevant persons of MMTC and others relating to the said destination verification report of Vizag/BBSR Customs was denied.

The genuine request of appellant for cross-examination of the concerned persons of MMTC and the dealer to reconfirm his transaction/possession of the subject gold as genuine in this fact finding process was denied by the original authority contrary to provisions of natural justice provided under Article 311 of the Constitution, hence the OIO is bad in law.”

- iii. After the death of K. Prasada Rao Subudhi on 01.05.2021, the petitioner-K. Satish Kumar Subudhi, one of the legal heirs, participated in the appeal proceeding on 12th November, 2021 pursuant to Notice bearing C.No. V(2) CAP/01/CCP/2020/2244-45, dated 27th October, 2021 issued by the Superintendent (Appeals), CGST, C.Ex. & Customs, Bhubaneswar before the Commissioner (Appeal), Customs, Bhubaneswar.

- iv. The appeal hearing remained inconclusive and no further date was given instantly.
- v. When no further communication was received even after lapse of almost three months from the date of hearing, *i.e.*, 12.11.2021, the petitioner on 09.02.2022 filed a petition reiterating his prayer for grant of opportunity of cross-examination of witnesses.
- vi. On 14.02.2022 the petitioner approached this Court invoking provisions of Article 226 of the Constitution of India for issue of *mandamus* by way of writ petition being W.P.(C) No.4662 of 2022 which came to be disposed of on 17.02.2022 on the consent of the counsel for both the parties. It is, thus, evident that the department was well aware of the fact that the matter in said writ petition was on board before this Court on 17.02.2022.
- vii. Even if the department feigns ignorance about matter being listed for hearing before this Court, the Commissioner (Appeals), Customs, Bhubaneswar could not have passed the Order in Appeal on the said date without disposing of the petition for cross-examination. Therefore, the Order-in-Appeal purported to have been passed by the Commissioner (Appeals), Bhubaneswar on 17.02.2022 at 15:33:09 and served on the petitioner on 08.03.2022 cannot be sustained for want of adherence to the principles of natural justice.

- viii. Despite the said violation, the petitioner approached the Commissioner (Appeals) with a prayer to afford a chance to cross-examine the witnesses by filing representation on 28.03.2022, which came to be rejected by the Superintendent (Appeals), CGST, C.Ex. & Customs, Bhubaneswar, with the following words:

“Reference to your above said representation for cross-examination of the witness in your Appeal matter, based on direction issued by Hon’ble Orissa High Court Judgment dated 17.02.2022 in the matter of W.P.(C) No.4662 of 2022, where Hon’ble High Court vide its Order dated 17.02.2022 directed to consider your representation of cross-examination dated 09.02.2022.

The Personal Hearing in the matter was held on 12.11.2021, which was attended by you, where enough opportunity of hearing and representation was provided. After three months of hearing, you have submitted one more representation dated 09.02.2022 requesting for cross-examination of witness.

This office of the Commissioner (Appeal), after going through the written and oral submissions and representations, facts and circumstances and relevant provisions of law, have already issued and dispatch an order in appeal No.08/CUS/CCP/2022 dated 17.02.2022, which is an appealable order.

The Order in Appeal is issued after observing the principles of natural justice. The Order in Appeal is issued in line with provisions of Section 128 and 128A of the Customs Act.

Under customs Law, the Commissioner Appeals do not have power to re-call/review or modify the already issued Order in Appeal.

You have liberty to file an Appeal before jurisdictional CESTAT or any other forum as deemed fit.”

- ix. Usurping the jurisdiction of the Appellate Authority, the Superintendent (Appeals), CGST, C.Ex. & Customs, Bhubaneswar appears to have rejected the representation dated 28.03.2022 *vide* Communication dated 31.03.2022.
- x. The Appellate Authority has, therefore, attempted to frustrate the effect of writ of *mandamus* issued by this Court *vide* Order dated 17th February, 2022.
- xi. Under such circumstances, by way of the present I.A. bearing No.6274 of 2022, the petitioner has made the following prayers:

“In the aforesaid peculiar facts and circumstances of the case, the petitioner most humbly and respectfully prays that the Hon’ble Court may graciously be pleased to declare the order under Annexure-B dated 17.02.2017 and Annexure-D dated 31.03.2022 non est in the eyes of law/order of this Hon’ble Court dated 17.02.2022 in W.P.(C) No.4662 of 2022;

And consequently be pleased to direct the opposite party No.4 to pass the order after considering the application of the petitioner dated 09.02.2022 (Annexure-E) in compliance of the order of this Hon’ble Court dated 17.02.2022 in W.P.(C) No.4662 of 2022;

****”*

- 6. On 22.08.2022 the matter in I.A. No.6274 of 2022 filed by the petitioner in the disposed of W.P.(C) No.4662 of 2022 was placed on board. This Court passed the following order on the said date:

“1. This matter is taken up through virtual/physical mode.

2. *The writ petition disposed of on 17th February, 2022 by a consensus. The aforesaid I.A. has been moved seeking declaration of the order dated 17th February, 2022 passed by the Appellate Authority-Opposite Party No.4 as non est and in violation of the spirit of the order passed by this Court.*
3. *Issue notice for 24th August, 2022.*
4. *Mr. Radheshyam Chimanka, Senior Standing Counsel appears and waives notice on behalf of Opposite Parties and submitted that he has already sought for instruction on the said I.A.. Five extra copies of the I.A. be served on him in course of the day, who prays for a day's adjournment to seek instruction.*
5. *The complete records relating to the appellate proceedings be immediately sealed and produced in Court on the next date.*
6. *Mr. Radheshyam Chimanka is directed to ensure that the needful is done.”*
7. When the matter is called on 24th August, 2022, Mr. Radheyshyam Chimanka, counsel for the opposite party No.4-Commissioner (Appeals) submitted record in sealed cover being handed over to him by the Superintendent (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar Sri Biswanath Jena.
8. The sealed cover is opened in the Court during the course of hearing of I.A. today and, it is found on perusal of the Appeal Record that:
 - i. No order-sheet depicting day-to-day proceeding is maintained.

- ii.* There is no indication as to conduct of hearing on petition dated 09.02.2022.
- iii.* There is no further date fixed after 12.11.2021.
- iv.* Said date, *i.e.*, 12th November, 2021 was the first date of appearance of one of the legal heirs, namely Sri K. Satish Kumar Subudhi through Amiya Kanti Patnaik, Authorised Person after the death of the father of the petitioner.
- v.* There is no indication as to refusal of issue of summons to the witnesses as prayed for in the petition filed by Late K. Prasada Rao Subudhi.
- vi.* There is no evidence on record to suggest that the Commissioner (Appeal) has fixed further date between 12th November, 2021 (first appearance of the petitioner) and 9th February, 2022, *i.e.*, the date on which petition praying therein to issue summons to the witnesses was filed.
- vii.* Minute scrutiny of the Order-in-Appeal dated 17.02.2022 shows that the Commissioner (Appeal) has made certain corrections in the draft order placed at page 620 of the Appeal Record, but the final copy of said Appellate Order placed at page 646 of said record does not indicate the rectification of error being carried out. It, therefore, seems that the Appellate Authority has shown undue haste in finalizing the appeal realizing that writ petition containing the allegation of non-consideration of petition dated 09.02.2022 was before this Court for hearing on

17.02.2022. This Court, hence, finds that the Appellate Order dated 17.02.2022 was issued so hastily that the suggested corrections in the draft Order remained unattended to.

- viii. Further startling fact is glaring on the record to the effect that as if the Superintendent (Appeals), CGST, C.Ex. & Customs, Bhubaneswar was within his power to invoke appellate jurisdiction, on 31.03.2022 rejected the representation of the petitioner filed on 28.03.2022 addressed to the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar which is available at page 688 of the Appeal Record.
- ix. A downloaded copy of four notes depicting communication between the Commissioner (Appeals) and Superintendent (Appeals) is attached to the Appeal Record. At note Nos.3 and 4, dated 24th March, 2022, it is maintained as follows:

“Note#3

The Hon’ble High Court of Orissa vide Order dated 17.02.2022 has directed the Appellate Authority to decide the case in accordance with law based on material relied upon by the Adjudicating Authority. The case has already been decided vide O-i-A No.08/CUS/CCP/2022, dated 17.02.2022. Therefore, no action lies at our end. The CCP has also requested to supply the copy of the O-i-A.

For information pl.

24/03/2022 01:18 PM

Biswanath Jena

Superintendent-Appeals

Note#4

I presume that the impugned letter dated 9.2.2022 referred in HC order was discussed in our O-i-A. No further action is required at our level now.

24/03/2022 03:26 PM

Arvinder Singh Ranga

Commissioner-Appeals”

It is noticed by this Court that both the Superintendent-Appeals and the Commissioner-Appeals have omitted to read the Order date 17.02.2022 of this Court appropriately.

This Court in the said Order clarified as follows:

*“We make it clear that we have not expressed any opinion on the merits of the matter and it is left open to the Appellate Authority to take a decision on the application dated 9.02.2022 (Annexure-9) **based on material** relied upon by Adjudicating Authority either prior **or while passing of final order in the appeal in accordance with law.**”*

[Emphasis supplied]

On the date when the Appellate Order was purported to have been passed, *i.e.*, 17.02.2022, the Appellate Authority had on his record the petition dated 09.02.2022. When the material on Appeal Record shows that the Appellate Authority kept the file dormant since 12.11.2021, but suddenly sprung into action on 17.02.2022, *i.e.*, the date on which the writ petition was directed to be taken up by this Court, and stated to have passed the Appellate Order on 17.02.2022. From the tenor of Letter dated 31.03.2022 issued by Superintendent (Appeal) rejecting the representation dated 28.03.2022 shows that the Appellate

Authority has abdicated his authority which is impermissible under law.

9. This Court examined the purport and scope of principles of natural justice and consequences in absence of adherence thereto in the case of *Utkal Asbestos Limited Vrs. Sales Tax Officer and another*, 1997 (I) OLR 571 = (2003) 133 STC 22 (Ori). This Court observed as follows:

“8. *Natural justice is another name for common sense justice. Rules of natural justice are not codified canons, but they are principles ingrained into the conscience of men. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.*

The expression natural justice and legal justice do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law.

The adherence to principle of natural justice as recognised by all civilised States is of supreme importance when a quasi judicial body embarks on determining disputes between the parties. These principles are well-settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should

apprise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person in absentia becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair-play.

The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

What is meant by the term “principles of natural justice” is not easy to determine. Lord Sumner (then Hamilton., L.J.) in Rex Vrs. Local Government Board, Ex parte Arlidge (1914) 1 KB 160 at page 199 : 83 L.J. K.B. 86 described the phrase as sadly lacking in precision. In General Council of Medical Education and Registration of United Kingdom Vrs. Sapckman 1943 AC 627 ; (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt "to force it into any procustean bed" and mentioned that one essential requirement was “that the Tribunal should be impartial” and have no personal interest in the controversy, and further that it should give “a full and fair opportunity” to every party of being heard.

Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education Vrs. Rice (1911) AC 179 = 80 L.J. KB. 796, where Lord Loreburn, L.C., observed as follows:

*“Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds *** It will, I suppose usually be of an administrative kind; but sometimes it will involve*

*matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and 'fairly listen to both sides', for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial *** The board is in the nature of the arbitral Tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by Mandamus and Certiorari."*

Lord Wright also emphasised from the same decision the observation of the Lord Chancellor that the Board:

"Can obtain information in any way they think best always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view."

To the same effect are the observations of the Earl of Selbourne, L.C. in Spackman Vrs. Plumstead District Board of Works (1885) 10 AC 229 ; 54 LJMC 81, where the learned and noble Lord Chancellor observed as follows :

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that 'the substantial requirements of justice' shall not be violated. He is not a judge in the proper sense of the word ; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to 'the essence of justice'."

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase “justice should not only be done, but should be seen to be done”.

9. *The concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.*
10. *Natural justice has been variously defined by different judges. A few instances will suffice. In Drew Vrs. Drew and Lebura (1855) 2 Macg. 1.8, Lord Cranworth defined it as “universal justice”. In James Dunbar Smith Vrs. Her Majesty The Queen (1877-78) 3 AC 614, 623 JC Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase “the requirements of substantial justice,” while in Arthur John Spackman Vrs. The Plumstead District Board of Works (1885) 10 AC 229, 240, Earl of Selbourne, L.C. preferred the phrase “the substantial requirements of justice”. In Voinet Vrs. Barrett (1985) 55 LJRD 39, 41, Lord Esher, M.R., defined natural justice as “the natural sense of what is right and wrong”.*

While, however, deciding *Hookins Vrs. Smethwick Local Board of Health* (1890) 24 QBD 712, 716, Lord Esher, M.R, instead of using the definition given earlier by him in *Voinet Vrs. Barrett* (1985) 55 LJRD 39 chose to define natural justice as “fundamental justice”. In *Sidon Vrs. Baldwin* (1963) 1 WB 539, 578, Harman L.J., in the Court of Appeal countered natural justice with “fair-play in action”, a phrase favoured by Bhagwati, J. in *Maneka Gandhi Vrs. Union of India* (1978) 2 SCR 621, 676 (AIR 1978 SC 597 at pages 625-626). In *re H.K. (An Infant)* (1967) 2 QB 617, 630 Lord Parker, C.J. preferred to describe natural justice as “a duty to act fairly”. In *Fairmount Investments Ltd Vrs. Secretary to State for the Environment* (1976) 1 WLR 1255, 1265-66, Lord Russell of Willowan somewhat picturesquely described natural justice as “a fair crack of the whip”. While Geoffrey Lane, L.J., in *Regina Vrs. Secretary of State for Home Affairs Ex parte Hosenball* (1977) 1 WLR 766, 784 preferred the homely phrase “common fairness”.

11. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “*nemo judex in causa sua*” or “*nemo debet esse judex in propria causa sua*” as stated in (1605) 12 Co. Rep. 114 (Earl of Derby's case), that is, “no man shall be a judge in his own cause”. Coke used the form “*aliquis non debet esse judex in propria causa quia non potest esse judex et pars*” (Co. Litt. 1418), that is, “no man ought to be a judge in his own cause, because he cannot act as judge and at the same time be a party”. The form “*nemo potest esse simul actor et judex*”, that is, “no one can be at once suitor and judge” is also at times used. The second rule and that is the rule with which we are concerned in this

writ petition is “*audi alteram partem*”, that is, “hear the other side”. At times and particularly in continental countries the form “*audietur et altera pars*” is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely, “*qui aliquid statuerit parte inaudita altera setquam licit dixerit, haud aequura facerit*”, that is, “he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right”, (See *Bosewell's case* (1605) 6 Co. Rep. 48-b, 52-a) or in other words as it is now expressed, “justice should not only be done but should manifestly be seen to be done”.

9.1. The quintessence of cross-examination of witness has been propounded by various Courts and all the Courts are led to hold that it is *sine qua non* and causing enquiry without due confrontation to the party against whom the decision is taken vitiates the proceeding for lack of fair-play. Non-summoning of witnesses for the purpose of cross-examination results in miscarriage of justice. Extending benefit of cross-examining the witness when a decision of *quasi* judicial authority leads to adversely affect the claim of the participant in the proceeding is founded on the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done. [See *Khem Chand Vrs. Union of India*, 1958 SCR 1080 = AIR 1958 SC 300].

9.2. In *Ayaayubkhan Noorkhan Pathan Vrs. State of Maharashtra*, (2013) 4 SCC 465 it is held that not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity,

it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice. For coming to such a conclusion the Hon'ble Supreme Court has referred to the following decisions:

- “24. *A Constitution Bench of this Court in State of M.P. Vrs. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: Union of India Vrs. T.R. Varma, AIR 1957 SC 882; Meenglas Tea Estate Vrs. Workmen, AIR 1963 SC 1719; M/s. Kesoram Cotton Mills Ltd. Vrs. Gangadhar & Ors., AIR 1964 SC 708; New India Assurance Company Ltd . v . Nusli Neville Wadia and Anr., AIR 2008 SC 876; Rachpal Singh & Ors. Vrs. Gurmit Singh & Ors., AIR 2009 SC 2448; Biecco Lawrie & Anr. Vrs. State of West Bengal & Anr., AIR 2010 SC 142; and State of Uttar Pradesh Vrs. Saroj Kumar Sinha, AIR 2010 SC 3131).*
25. *In Lakshman Exports Ltd. Vrs. Collector of Central Excise, (2005) 10 SCC 634, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.*
26. *In New India Assurance Company Ltd., Vrs. Nusli Neville Wadia & Anr., AIR 2008 SC 876; this Court considered a*

case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows :

“If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right.”

In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

27. *In K.L. Tripathi Vrs. State Bank of India & Ors., AIR 1984 SC 273, this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also: Union of India Vrs. P.K. Roy, AIR 1968 SC 850; and Channabasappa Basappa Happali Vrs. State of Mysore, AIR 1972 SC 32). In Transmission Corpn. of A.P. Ltd. Vrs. Sri Rama Krishna Rice Mill, AIR 2006 SC 1445, this Court held:*

“In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In

that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the Appellate Authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official”.

28. *The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross- examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross- examination.*

29. *In Rajiv Arora Vrs. Union of India & Ors., AIR 2009 SC 1100 = (2008) 15 SCC 306, this Court held:*

“Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation.

The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review.”

- 9.3. In *K.I. Shephard Vrs. Union of India*, (1987) 4 SCC 431, the Hon'ble Apex Court held that fair play in actions is a facet of natural justice. The principles of natural justice are also applicable to administrative actions. Even in emergent situations, compliance with at least minimum requirements of natural justice rules, is a condition precedent to taking any action which affects adversely leading to civil consequences.
- 9.4. It is well settled law that justice is rooted in confidence and justice is the goal of a *quasi* judicial proceeding also. If the functioning of a *quasi* judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to *quasi* judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it. [See *Judgment dated 5th April, 2022 of this Court in Rawani Construction Private Limited Vrs. State of Odisha, W.P.(C) No.21508 of 2017*].
- 9.5. Under Chapter XIII, Section 108 of the Customs Act, 1962 empowers any Gazetted Officer of Customs to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry which such Officer is making under the Act. Section 108 is an enabling provision empowering a Gazetted Officer of the

Customs empowers to enforce attendance of persons he considers necessary for the purpose of an enquiry under the Customs Act. It declares every such enquiry to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860. Chapter XIV in Section 122 of the said Act of 1962 provides for adjudication of confiscations and penalties. It stipulates that, in every case under Chapter XIV of the Act of 1962, in which anything is liable to be confiscated or any person is liable to a penalty such confiscation or penalty may be adjudged by the persons as stipulated therein. Section 122A of the Act of 1962 lays down the adjudication procedure. It requires the adjudicating authority to give an opportunity of hearing to a party in a proceeding if such party so desires. Section 122A of the Act of 1962 recognises that the principles of natural justice are applicable to proceedings under the Customs Act. Principles of natural justice are applicable to any proceeding which affects the interest of any person to such proceeding. Applicability of the principles of natural justice to a proceeding which affects any interest of any person is to be read into a statute.

- 9.6. The person so summoned can make a statement under Section 108. The statement made under Section 108 of the Customs Act is recognised to be distinct and different from statement recorded by Police Officer during the course of investigation under the Code of Criminal Procedure. Statements made under Section 108 are admissible in evidence. They can be used as evidence in any adjudicating or any proceeding for prosecution. The relevancy of the statements made under Section 108 is dealt with in Section

138B under Chapter XVI of the Act of 1962 which deals with “offences and prosecution”. Chapter XVI of the Act of 1962 enables the authorities to initiate criminal proceedings against persons who are guilty of the offences specified under said chapter. Although the Evidence Act, 1872 is not applicable to a proceeding under the Customs Act in the strict sense, the principles thereof are attracted. The adjudicating authority, the appellate authority and any other authority under the Customs Act, 1962 required to adjudicate upon any proceeding, is obliged to adhere to the principles of the Evidence Act, 1872 while deciding on any subject. The Evidence Act, 1872 envisages and stipulates that a statement made by a witness is relevant and is admissible in evidence only when such witness is offered for cross-examination in the proceeding. A party to the proceeding, introducing evidence through a person in the proceeding, is obliged to offer such witness for cross-examination to the opposite party. It is for the opposite party to either cross-examine such witness or to decline the same. However, till such time, the witness is offered for cross-examination to the opposite party, the statement given by such witness, in the proceeding does not become admissible as evidence in the proceeding. Such statement cannot be treated as evidence. Cross-examination is the norm for making the statement made by a witness relevant for evaluation in the proceedings. Section 138B carves out few exceptions and limits it to a proceeding under the Customs Act and a proceeding for prosecution launched before any Court of law in respect of offences under the Act of 1962. Section 138B(1) of the Act of

1962 envisages that, a statement made and signed by a person before any Gazetted Officer of the Customs during the course of any enquiry or proceeding under the Customs Act shall be relevant, for the purpose proving, in any prosecution of an offence under the said Act, the truth of the facts which it contains, when the person who made the statement is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

- 9.7. Section 138B(2) of the said Act lays down that the exceptions carved out under Section 138B(1) of the Act of 1962 from the general law of evidence shall apply to a proceeding of adjudication under the Customs Act, so far as may apply in a proceeding before a Court for the prosecution of any offence under the said Act of 1962. When an adjudicating authority is faced with a proceeding in which, the prosecution introduces evidence of witnesses, then the prosecution is obliged to offer such witness for cross-examination to the noticee. Likewise, if the noticee introduces any witness in its defence, the noticee is obliged to offer its witness for cross-examination to the prosecution. Only upon such offers are made, then the evidence of such witness becomes relevant and admissible as evidence.

However, the evidence of such witnesses would also become relevant and admissible, if any of the grounds stipulated in Section 138B(1) of the Act of 1962 is attracted, in a fact scenario. In a given case, a person making a statement under Section 108 of the Act of 1962 dies prior to the conclusion of the adjudication proceeding and before he can be cross-examined by a noticee, then, the statement of such witness, will not become irrelevant. The relevancy of such statement, would be saved by virtue of the provisions of Section 138B(1)(a) read with 138B(2) of the Act of 1962.

- 9.8. In *Ciabro Alemao Vrs. Commissioner of Customs*, 2017 SCC OnLine Bom 8811 = (2018) 1 Bom CR 545 = (2018) 362 ELT 465 Section 138B of the Customs Act has been interpreted as follows:

- “43. *The CESTAT confused the issues of relevance and proof. A statement may be relevant, but it yet needs to be proved. The fact that a statement is made and recorded, and is statutorily said to be relevant, does not mean it is proved. That statement, like all testimony, must be subjected to the rigours of cross-examination, to be drawn into the evidentiary pool to form a basis for reasoning or conclusion. Section 138B does not say, and could not say, that statements can be taken as proved even without cross-examination. This, however, is how the CESTAT has misunderstood the section. All that the section says is that for want of production of a witness, his Section 108 statement does not automatically cease to become relevant. Questions of relevancy and proof are yet determined by the Indian Evidence Act, and the CESTAT wholly failed to take these into account.*
44. *In Arya Abhushan Bhandar Vrs. Union of India*, 2002 (143) ELT 25 (SC) it was held that material witnesses not produced for cross-examination, though asked for, amounts

to a clear breach of natural justice. In Union of India Vrs. TR Varma [1958] 1 SCR 499, in paragraph 10, the Court held:

“it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.”

- 9.9. Right from proceeding before the Adjudicating Authority the petitioner has been praying for cross-examination of material witnesses. Neither the Original Authority nor the Appellate Authority has afforded opportunity to cross-examine the witnesses. At page 24 of the Appellate Order dated 17.02.2022 the Appellate Authority merely stated that report received from Adjudicating Authority indicated “the witnesses were already examined or not traceable” and rejected the demand for cross-examination of the witnesses. It is pertinent to observe that when such vital report is relied upon by the Appellate Authority, the same does not form part of the Appeal Record. There is no iota evidence available on record to suggest that the said report of the Adjudicating Authority was ever confronted to the petitioner. Therefore, such a document remained untested material. It is trite that untested material cannot be treated to have probative value. Suffice it to observe that there was no attempt made on the part of the Appellate Authority in this regard to verify the veracity of such a report, if any.

9.10. Turning to the facts of the present case, it is seen from the Appellate Record that after date of death of father of the petitioner, K. Prasada Rao Subudhi, only on 12.11.2021 alleged opportunity of hearing was stated to have been afforded which the Superintendent (Appeal) conducting himself as if he were the Appellate Authority affirmed in his communication dated 31.03.2022. The very statement that “The Personal Hearing- in the matter was held on 12.11.2021, which was attended by you where enough opportunity of hearing and representation was provided. After three months of hearing, you have submitted one more representation dated 09.02.2022 requesting for cross-examination of witness.” is contrary to material available on record. Further fact which is noticed is that the petitioner was denied of opportunity of cross-examination by the Original Authority even though specific prayer by way of petition was made. Before the Appellate Authority also the petitioner made identical prayer while filing the Appeal. When the Appellate Authority did not accede to such a prayer during the course of hearing on 12.11.2022, before passing final Appellate Order, the petitioner-substituted legal heir of original appellant-Late K. Prasada Rao Subudhi, has made fresh prayer for issue of summons by way of petition dated 09.02.2022. When said petition was available on the Appellate Record on the date passing of Order dated 17.02.2022, the Appellate Authority without affording opportunity of hearing on such petition ought not to have passed the final order.

9.11. It is not in dispute that the Superintendent (Appeal) received the petition dated 09.02.2022 for summoning the witnesses and on the

said date Appellate Order was not passed by the Commissioner (Appeals)-opposite party No.4. It is not denied that on receipt of said petition, further date of hearing was not intimated to the petitioner instantaneously nor subsequent thereto before passing the final order dated 17.02.2022 in appeal. Writ Record reveals that the copy of writ petition was served on Sri Radheyshyam Chimanka, Senior Standing Counsel on 15.02.2022. Main plank of argument of the counsel for the petitioner proceeded with the allegation that it is, therefore, not warranted for the Appellate Authority to dispose of without affording opportunity of hearing on the petition dated 09.02.2022 particularly when the hearing of appeal on 12.11.2021 remained inconclusive. From the document titled "Record of Personal Hearing" available at page 510 of the Appeal Record signed by the Commissioner (Appeals) as also Sri Amiya Kanti Patnaik, the Authorised Representative on behalf of the petitioner, it is manifest that the petitioner had reiterated its stance to the following effect:

"5.1. Grounds of dispute and prejudice:

- b) The genuine request of appellant for cross-examination of the concerned persons of MMTC and the dealer to re-confirm his transaction/possession of the subject gold as genuine in this fact finding process was denied by the Original Authority contrary to provisions of natural justice provided under Article 311 of the Constitution, hence the OiO is bad in law leading to prejudice."*

In view of such a stand of the petitioner, and the Appeal Record is silent about further date of hearing, it is obvious that the petitioner

was under impression that the Appellate Authority would fix up another date of hearing and intimate the petitioner after issuing summons to the witnesses. Mere dealing with such an aspect in the Order-in-Appeal rejecting the prayer made in the petition dated 09.02.2022 without affording opportunity of hearing on the same would not suffice compliance of the principles of natural justice. Thus, the petitioner feels rightly aggrieved for not being given an opportunity of being heard in that proceeding.

9.12. Therefore, this Court comes to conclusion that there has been gross violation of principles of natural justice and the petitioner had had no appropriate and adequate opportunity of hearing. Accordingly, the Appellate Order dated 17.02.2022 deserves to be quashed and a writ of *certiorari* be issued accordingly.

10. Before parting it is relevant to suggest that the Appellate Authority being *quasi* judicial authority is supposed to maintain transparency in day-to-day proceeding in the course of hearing of appeal. The Appellate Authorities and the Adjudicating Authorities are required to record each day's proceeding and signature of the authorized representative/party concerned be obtained in the margin of order-sheet against the record of proceeding/order passed to avoid confusion with regard to communication/intimation of future date/adjourned date. The *quasi* judicial Authorities are supposed to record the appearance of the parties and pass the zimni order to clearly reflect as to what had transpired in the proceeding on that date because it has been held by the Supreme Court in the case of *State of Maharashtra*

Vrs. Ramdas Shrinivas Nayak, (1982) 2 SCC 463 that record of the Court is accepted to be correct until and unless proved to the contrary before the same Court.

10.1. Thus, the recording of zimni orders by the Authorities is of great significance as it reflects the proceedings which transpire during the course of hearing. The Authorities are required to be highly sensitive about recording of the zimni orders lest it create a new type of litigation in the higher Court to deal with, as has happened in this present case where the petitioner. [Reference is made to *Sandeep Ghai Vrs. Neeraj Malhotra, CR No.496 of 2012 (O&M) vide Judgment dated 27 January, 2012 of the Punjab & Haryana High Court at Chandigarh.*]

10.2. Apt here to reflect here what has been pointed out by the Hon'ble Karnataka High Court in the case of *Krishna & Co. Vrs. State of Karnataka, (2001) 124 STC 423 (Kar)*:

“5. We need to record here that there are well-defined principles that apply to all judicial proceedings and it is most elementary that courts and Tribunals should not list a case for hearing behind the back of the opposite party, that alterations in the order sheet should never be made and more importantly that one sided or ex parte hearings are not only impermissible but are deprecated. This will apply more so when the case was reserved for judgment because it does create an apprehension of unfairness and the possibility of bias in the mind of the opposite party and irrespective of what were the reasons or how so ever innocuous the entire situation might have been, any breach of the aforesaid principles would be sufficient to vitiate the order that is ultimately passed.”

10.3. It is necessary to reiterate the anxiety as had been shown by an earlier co-ordinate Bench of this Court which cautioned the *quasi* judicial authorities in the following words in the case of *Narbheram Power and Steel Pvt. Ltd. Vrs. Joint Commissioner of Sales Tax, W.P.(C) No. 20613 of 2015, vide Order dated February 22, 2016*:

*“The very least that can be said in the present circumstances is that the principles of natural justice have been thrown to the wind. Accordingly without going into the merits of the case we set aside the assessment order dated 31.03.2015 passed by the Joint Commissioner of Sales Tax (O.P.1) under Annexure-1 on the ground of violation of principles of natural justice and inadequate opportunity of hearing offered to the petitioner. ****

We further issue a warning in this case to all statutory authorities that they must in exercise of quasi-judicial authority comply with the principles of natural justice as well as the rules framed at all times.”

11. Realising improper and haphazard maintenance of appeal record, and failure to adhere to the principles of natural justice in the course of hearing of appeal, Mr. Radheyshyam Chimanka, Senior Standing Counsel for Central GST, Central Excise & Customs, upon instructions, fairly conceded that on remand, the appellate authority shall consider the application dated 09.02.2022 for issue of summons to the witnesses and merit of the appeal afresh. Under such premise, the Order-in-Appeal dated 17th February, 2022 is set aside for want of adherence to the principles of natural justice. Therefore, the matter is now remanded to the Commissioner (Appeals), Bhubaneswar-opposite party No.4. The petitioner is directed to appear before the opposite party No.4 on 21st September, 2022 for instructions. The Appellate Authority-

opposite party No.4 shall fix up date of hearing and thereafter affording adequate opportunity, he may proceed with the matter. Upon hearing the petitioner on the petition dated 09.02.2022 and merit of the appeal, the said Authority is at liberty to take appropriate decision in appeal including the petition dated 09.02.2022 seeking issue of summons to witness(es) and pass orders in accordance with law. It is made clear that this Court has not expressed any view on the merits of the appeal.

11.1. The I.A. bearing No.6274 of 2022 in the writ petition being W.P.(C) No.4662 of 2022 stands disposed of in the above terms. There shall be no order as to costs.

12. Appeal Record be returned to Sri Radheysham Chimanka, Senior Standing Counsel (CGST, Central Excise & Customs) immediately on proper acknowledgement.

(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE