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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on:16.09.2022*

+ **W.P.(C) 12836/2022 and CM APPL. 39031/2022**

RAMESH WADHERA ......Petitioner

Through: Mr Naveen Malhotra with Mr Ritvik Malhotra, Advocates.

versus

THE COMMISSIONER OF CUSTOMS ......Respondent

Through: Mr Rajesh Mishra, Sr. Standing Counsel with Ms Meenal Duggal, Advocate.

+ **W.P.(C) 12333/2022 and CM APPL. 37007/2022**

SANJEEV MAGGU ......Petitioner

Through: Mr Akhil Krishan Maggu, Advocate.

versus

COMMISSIONER OF CUSTOMS, ACC (EXPORTS), NEW CUSTOM HOUSE, NEW DELHI ......Respondent

Through: Mr Rajesh Mishra, Sr. Standing Counsel with Ms Meenal Duggal, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The above-captioned writ petitions raise common issues.

1.1 The issues, which the writ petition raise, have been etched out in the order dated 26.08.2022 passed in W.P.(C) 12333/2022, and in the order dated 05.09.2022 passed in W.P.(C) 12836/2022.

1.2 As a matter of fact, the order dated 05.09.2022 refers to the earlier order dated 26.08.2022 passed in W.P. (C) 12333/2022.

2. Briefly put, there were three issues, that the petitioners had raised before us.

(i) That they have not been provided the documents which were referred to in the show-cause notice ["SCN"] dated 29.06.2022. This SCN is common to both the writ petitions. Pertinently, the documents *qua* which grievance has been raised by the petitioners are those documents which are not relied upon by the respondent/revenue. Nevertheless, these documents find mention in paragraph 79 of the aforementioned SCN.

(ii) The second grievance articulated by the petitioners is, that they are not being afforded the opportunity to cross-examine the persons whose statements are relied upon against them. The persons, whose statements are relied upon by the respondent/revenue are alluded to in paragraph 79 (B-H) of the aforementioned SCN.

(iii) The third grievance raised by the petitioners concerns the jurisdiction of the authority which has issued the aforementioned SCN.

3. Mr Rajesh Mishra, learned senior standing counsel submits, that insofar as the aspect concerning jurisdiction is concerned, the respondent/revenue relies upon the notification dated 24.08.2017.

3.1 According to Mr Mishra, the concerned authority has not only the jurisdiction to issue the aforesaid SCN, but also the necessary powers to adjudicate on the aspects raised in the SCN.

3.2 However, insofar as the first two aspects are concerned, Mr Mishra says, that copies of all the documents referred to in paragraph 79 of the aforementioned SCN will be furnished, provided they are still in the possession of the respondent/revenue.

3.3 It is Mr Mishra's submission, that some of these documents are not found in the record available with the respondent/revenue.

3.4 As far as the aspect concerning the opportunity to cross-examine persons who are named in paragraph 79 (B-H) is concerned, Mr Mishra says that the same can only occur, after a final reply is filed by the petitioners.

3.5 Mr Mishra says, that at present, the petitioners have only filed an interim reply.

4. In rejoinder, counsel for the petitioners submit, that once copies of the documents mentioned in paragraph 79 of the SCN, to the extent physically available with the respondent/revenue are furnished, a final reply will be filed.

5. Thus, having regard to the submissions made by the counsel for the parties, the above-captioned writ petitions are disposed of with the following directions:

(i) The respondent/revenue will furnish copies of all such documents referred to in paragraph 79, which are in their physical possession. The respondent/revenue will indicate, clearly, to the petitioners, as to which of those documents are not available in their record. This exercise will be completed within the next two weeks.

(ii) Upon receipt of the documents referred to in clause (i) above, the petitioners shall file their final reply within two weeks thereafter.

(iii) Once replies are filed, the adjudicating authority will fix a date for cross-examination of witnesses referred to in paragraph 79 (B-H).

(iv) As soon as the aforementioned exercise is over, the concerned authority will proceed to adjudicate the SCN.

(v) While adjudicating the SCN, the concerned authority will bear in mind, the objection raised by the petitioners, as regards his jurisdiction. The adjudicating authority will deal with this aspect of the matter, while passing the final order, concerning the aforementioned SCN.

6. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

SEPTEMBER 16, 2022 / tr

Click here to check corrigendum, if any