

WPA 16877 Of 2023

09.08.2023

Sl no. 11

Ct no. 2

P.M.

Akshoy Kumar Ghosh & Sons.

- Vs -

**Principal Commissioner of Customs (Airport
& ACC Commissionerate), Kolkata & Ors.**

Mr. Neeraj Kumar Pandey,
Mr. Shakeel Mohammed Akhtar

... for the petitioner

Mr. Kaushik Dey,
Mr. Tapan Bhanja

... for the customs authorities.

Heard learned advocates appearing for the parties.

This is the third round of litigation and the grievance and issue involved in this writ petition relates to the suspension of petitioner's customs broker licence.

It appears from record that against the aforesaid grievance petitioner had filed earlier writ petition being WPA 26090 of 2022 which was disposed of by the order of this Court dated 1st December, 2022. Relevant portion of the said order is quoted hereunder :

“Considering the facts and circumstances of this case this writ petition being WPA 26090 of 2022 is disposed of by directing the Chief Principal Chief

Commissioner of Customs concerned to appoint another officer having the same rank to hear the case of the petitioner relating to suspension of his licence. Time for personal hearing on the basis of the aforesaid impugned notice dated 22nd November, 2022 is extended by 30 days from date. For the limitation purpose the period from the date of initial notice dated 22nd November, 2022 till the date of issuance of fresh notice for personal hearing shall be excluded. Needless to mention that the authority concerned to be appointed to hear the matter shall pass a speaking and reasoned order in accordance with law. It is recorded that this Court has not gone into the merit of the order of alleged suspension and the authority while deciding the case of the petitioner shall act strictly in accordance with law. In view of this order, the officer who has issued the impugned aforesaid notice dated 22nd November, 2022 shall not be eligible to proceed on the basis of the aforesaid notice.”

Against the aforesaid order of the this Court dated 1st December, 2022 the respondent Customs Authority had filed appeal being MAT No. 48 of 2023 with IA No. CAN 1 of 2023 which was dismissed by the Hon’ble Division Bench of this Court by order

dated 15th March, 2023. It appears from the aforesaid order of the Hon'ble Division Bench that time to complete the impugned proceeding was further extended by thirty days from the date of receipt of the certified copy of the said order.

Mr. Dey, learned advocate appearing for the respondent Customs Authority while opposing this writ petition submits that time to complete the impugned proceeding under the relevant provision of the statute is merely directory and not mandatory in spite of admitted position that twice extension was granted to the respondent customs authority, firstly by this writ Court for a period of thirty days by its order dated 1st December, 2022 time to complete the proceeding as per the order of this Court which expired on 30th December, 2022. Even after the order of the Hon'ble Division Bench, granting further extension, the customs authority have not completed the proceeding and the time for extension granted by the order of the appeal Court has also expired.

In such circumstances the defence of Mr. Dey that the time to complete the proceeding under the provisions of the statute is since directory not mandatory in spite of two orders of this Court granting extension of time once by the Single Bench

and another by Hon'ble Division Bench and without approaching either Single Bench or the Hon'ble Division Bench for further extension of time such defence of the respondent authority concerned is not convincing and acceptable and accordingly the impugned proceeding stand quashed and all legal consequence will automatically follow including the restoration of the petitioner's licence at once.

Quashing of the impugned proceeding will not be a bar on the part of the respondent customs authority concerned to initiate any fresh proceeding, in future, in accordance with law.

With this observation and direction this writ petition being WPA 16877 of 2023 stands disposed of.

(Md. Nizamuddin, J.)