

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/28/2023
IA No.GA/1/2023

VIKASH KUMAR MARODIA ALIAS VIKASH KUMAR AGARWAL
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th March, 2023

Appearance :
Mr. Anil Kumar Dugar, Adv.
Mr. R. Chatterjee, Adv.
...for the appellant.

Mr. K.K. Maiti, Adv.
... for the respondents.

The Court : This intra-Court appeal filed by the writ petitioner is directed against the order dated 4th January, 2023 in WPO No.3317 of 2022. By the said order, the writ petition filed by the appellant challenging summons dated 17th November, 2022 was dismissed. The learned Single Bench by the impugned order had dismissed the writ petition on the ground that the time stipulated in the summons had already expired and there is nothing more to be examined in the writ petition. Aggrieved by such order, the appellant is on appeal.

We have heard Mr. Anil Kumar Dugar, learned counsel appearing for the appellant and Mr. K.K. Maiti, learned counsel for the respondents.

As could be seen from the impugned summons dated 17th November, 2022, the appellant was required to appear before the concerned authority on 6th December, 2022 at 2 P.M. This date stood extended till 15th December, 2022. Thus, on the date when the Learned Writ Court considered the writ petition, the summons issued by the authority had already lost its force. Therefore, the learned Single Bench was justified in coming to the conclusion that the correctness in issuance of the summons was not required to be examined as it has become an academic issue.

Thus, we are inclined to interfere with the order passed by the learned Single Bench. However, we are conscious of the fact that in the writ petition the appellant had raised the question of limitation for initiation of any proceedings under the provisions of the Customs Act, 1962. One of the grounds raised in the writ petition is as follows:

- “II. For that the purpose of issuance of summons is to investigate as to whether there is any violation of provision of law, which requires adjudication. In the instant case, the summons has been issued asking the petitioner to give evidence and produce documents in relation to period 2006 whereas section 28(4) of the Customs Act, 1962 clearly states that the show cause notice can be issued within 5 years from the relevant date, which in the instant case lapsed long back in 2012. In view of such facts, the issuance of impugned summons by the authority is malafide, harassing and abuse/colourable exercise of power by the authority.”

The above legal issue raised by the appellant has not been decided in the writ petition. In any event, since the period stipulated in the summons had already expired, we leave the legal issue open by giving liberty to the appellant to

question the jurisdiction of the authority to issue the summons on the above ground in the event the department chooses to issue a fresh summons in the matter.

With the above observation, the appeal stands disposed of.

The stay application being IA No. GA/1/2023 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/ s.kumar.