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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/913/2023

TAPAN KUMAR PAUL
VS
UNION OF INDIA AND ANR.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 12th September, 2023.

APPEARANCE:

Mr. Somnath Ganguly,Adv.

Mr. T.K.Mitra,Adv.

Mr. P.Chatterjee,Adv.

Ms. Priyamvada Singh,Adv.

...for the petitioner.

Mr. K.K.Maiti,Adv.

Mr. Tapan Bhanja,Adv.

...for Customs Authorities.

The Court:-Heard learned advocates appearing for the parties. By this writ petition, petitioner has challenged the impugned adjudication order on the ground of violation of principle of natural justice by not allowing the petitioner to cross-examine one witness named Mr. Lodaya upon whose statement respondent has relied in passing the impugned adjudication order. It appears from record that respondent authorities were given several opportunities to produce the relevant record to establish from record that the adjudicating

authority concerned has either not relied upon the statement of such witness or in course of adjudication proceeding has allowed the petitioner to cross-examine the said witness.

Mr. Maiti, learned advocate appearing for the respondents took adjournments several times to take appropriate instruction and finally this Court passed the order to produce the original record in this regard by order dated 4th September, 2023. In spite of specific order of this Court dated 4th September, 2023, the respondent has failed to produce the original record. Now the respondent has come up with a new story that the record is lying with the DRI, Ahmedabad.

From the conduct of the respondent, it appears that the respondent has no record to substantiate that the petitioner was given opportunity to cross-examine the witness in question or that the respondents have not relied upon statement of the witness in question.

Considering the facts and circumstances of the case and submissions of the parties and in view of the discussion made above, I am of the view that filing of affidavits in this writ petition will be a futile exercise and the case could not be improved by the respondents in view of their failure to produce the original relevant records and even to file any specific written instruction making a specific statement that an opportunity of cross-examination was given to the petitioner to cross-examine the aforesaid witness and it is well settled established that any person against whom any authority passes an

adverse order by relying on statement of a third person, such person has a right to cross-examine the person on whose statement authority has relied and denial of such right is clear violation of principles of natural justice.

Considering the facts and circumstances of the case and in view of the discussion made above, this writ petition, being WPO No. 913 of 2023 is disposed of by setting aside the impugned order dated 27th November, 2020 and remanding the matter to the adjudicating authority concerned on the limited issue of right of the petitioner to cross-examine the aforesaid witness named Mr. Lodaya. It is clarified that this order will be confined to the case of the petitioner only and not to any other party in the impugned adjudication.

(MD. NIZAMUDDIN, J.)