

WPO No. 486 of 2017
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Md. Hussain
Versus
Union of India & Anr.

Before:
The Hon'ble Justice MD. NIZAMUDDIN
Date: 19th December 2023

Appearance:
Mr. Soumya Majumdar, Advocate
Mr. Manoj Malhotra, Advocate
Mr. Ravi Dubey, Advocate
for the petitioner

Mr. Vipul Kundlia, Advocate
Mr. Tapan Bhanja, Advocate
for the UOI

Mr. Bhaskar Prosad Banerjee, Advocate
Ms. Aishwarya Rajyashree, Advocate
for the customs

The Court: Affidavit-in-reply filed in Court is kept with the record.

Heard learned Advocates for the parties. I have considered the submissions and the affidavits filed by the parties.

By this writ petition, petitioner has challenged the impugned adjudication order dated 17th May 2017 passed by the respondent Commissioner of Customs (Preventive), West Bengal, Kolkata,

imposing penalty under section 112 of the Customs Act, 1962, which is appealable under the Statute.

By this writ petition, petitioner has also challenged some provisions of section 129E of the Customs Act which was not pressed by the petitioner.

I have perused the impugned adjudication order which is quite elaborate and has discussion in detail both on facts and on law points and the said adjudication order by in no manner could be said to be as non-speaking one or in violation of principle of natural justice or in contrary to any specific provision of law or there is any procedural irregularity.

Though Mr. Majumder, learned Advocate appearing for the petitioner submits that panchas/witnesses to the search operation of the customs officers were not allowed by the authority to cross-examine by the petitioner, I find that due procedure of law has fully been observed while passing the impugned adjudicating order by issuing show-cause notice and providing opportunity of hearing to the petitioner and by considering the case made out by the petitioner in course of adjudication proceeding.

Impugned adjudication order, in the instant case, is based on detail investigation and evidence which could not be re-appreciated by this Court in exercise of constitutional writ jurisdiction.

Recording of little facts is necessary in this matter. According to the adjudicating authority, information was received in March, 2014

in the office of DRI, Kolkata, to the effect that substantial quantity of gold of foreign origin in biscuits form had been smuggled into India by the petitioner and kept secretly at his office premises at 32, Munshi Sadruddin Lane, Ground Floor, Kolkata – 700007 and the intelligence report also suggested that a group of three persons from Maharashtra conjointly came to the petitioner at his above mentioned office for purchasing and taking delivery of the consignment of 100 pieces of gold biscuits of foreign origin.

On the basis of the intelligence report and on the strength of the authorisation dated 12th March 2014, issued by the competent authority a search was conducted at the premises of the petitioner in presence of independent witnesses by observing all formalities required to be observed under the law.

The search team, in course of and at the time of execution of the search, found the petitioner and three other persons at the aforesaid premises of the petitioner and on being interrogated by the search team those three persons stated that they conjointly came to the petitioner for taking delivery of gold biscuits. On being questioned, the petitioner admitted that he had delivered 30 pieces of gold biscuits to one Maruti Bhimrao Patil, 40 pieces of gold biscuits to Chetan Jasraj Palgote and 30 pieces of gold biscuits to Yashin Amir Pathan. When those three persons were asked to produce the necessary documents related to gold biscuits in question they could not produce any paper and they all admitted that they had taken delivery of those 100 pieces

of gold biscuits of foreign origin from the petitioner. It also appears from record that DRI officers in course of such search found another 187 pieces of similar rectangular shape of yellow coloured metallic biscuits believed to be gold having foreign marked in the room on the first floor of the petitioner's premises collectively weighing 21.812 Kg (approx.).

After the conclusion of the search operation a thorough investigation was conducted and details of such investigation has been recorded in the impugned adjudication order.

It also appears from record that the petitioner has not only confessed about his involvement in the smuggling of gold in question rather he has reiterated also, though later on he retracted from his statement.

On perusal of records including adjudication order I do not find any reason for granting any relief to the petitioner in the writ petition since I do not find any violation of principle of natural justice or procedural irregularity or that the impugned adjudication order was without jurisdiction or that while passing the impugned adjudication order there was any patent contravention of any statutory provision of law.

So far as the allegation of the petitioner in not allowing the petitioner to cross-examine the panchas is concerned, I am of the view that the same is not sustainable for the reason that a person has right to cross-examine any witness if any authority relies on any statement

of that witness. In this case, simply in the presence of panchas the search took place for the confirmation of the search and nothing more. When an authority relies on the statement of a person or on material used against such person and the petitioner is not provided opportunity to cross-examine that witness or to inspect those materials, in that case there could be violation of principle of natural justice, which is not the case here. Furthermore, the impugned adjudication order is an elaborate order based on material facts and evidence which could not be scrutinised by this Court in exercise of its constitutional writ jurisdiction.

In view of the discussions made above, this writ petition (WPO 486 of 2017) is dismissed.

(MD. NIZAMUDDIN, J.)