

ORDER SHEET

WPO/595/2019
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. SADGURU FORWARDERS PRIVATE LIMITED AND ANR.
VS
THE COMMISSIONER OF CUSTOMS (PORT), KOLKATA

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date: 14th August, 2023.

Appearance:
Mr. Arijit Chakrabarti, Adv.
Mr. Nilotpal Chowdhury, Adv.
...For the Petitioner
Mr. K.K. Maiti, Adv.
Mr. Abhradip Maity, Adv.
...for Customs Authority

The Court: Heard learned advocates appearing for the parties.

A very short issue involved in this writ petition relates to violation of principles of natural justice by not allowing the petitioner to cross-examine two witnesses on whose statement the respondent Customs adjudicating Authority have relied in passing the impugned adjudication order. It was the stand of the respondent Authority concerned that both the aforesaid witnesses were not available and as per law the respondent had tried his level best to trace those witnesses but they could not find and as such the aforesaid issue raised by the petitioner is not sustainable in law.

By the order of this Court dated 10th April, 2023 the respondents Authority concerned were asked to verify the actual truth and the basis on which the respondent Authorities have taken the stand that there was no scope of allowing the petitioner to cross-examine those two witnesses since one Ambarmoni Dutta was found to be dead as per postal endorsement and the available death certificate. So far as second witness named Santanu

Dutta, on spot verification, information was gathered by the family of said Santanu Dutta and he is alive and he is available.

The relevant record in the aforesaid record has been filed by Mr. Maiti which may be kept with the record.

Considering the facts and circumstances of the case, the impugned adjudication order dated 26th June, 2019 is set aside only to the extent where the statement of aforesaid Santanu Dutta has been relied and the matter is remanded back to the adjudicating authority concerned to pass fresh order to the aforesaid extent after allowing the petitioner to cross-examine the said Santanu Dutta and in case for any reason the aforesaid Santanu Dutta does not cooperate and the petitioner could not get any chance to allow the petitioner to examine the aforesaid witness, in that event the adjudicating authority concerned will modify its impugned adjudication order by ignoring the statement of aforesaid witness.

It is clarified that in both the situation whether said Santanu Dutta is cross-examined or not, the impugned adjudication order will be modified accordingly after granting opportunity of hearing to the petitioner or its authorised representative. Benefit of this order will be confined to the case of the petitioners in this writ petition only. The whole proceedings shall be completed by the adjudicating authority within three months from the date of communication of this order.

With these observations and directions, this writ petition being WPO 595 of 2019 stands disposed of.

(MD. NIZAMUDDIN, J.)

