

ORDER SHEET
WPO/1620/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI AVIJIT SARKAR
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 29th September, 2023.

Appearance:
Mr. Arijit Chakrabarti, Adv.
Mr. Debaditya Banerjee, Adv.
Mr. Syed Wasim Faruque, Adv.
...For the Petitioner
Mr. Vipul Kundalia, Adv.
Mr. Soumen Bhattacharjee, Adv.
...For Union of India
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
.....for Customs Authority

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order in original dated 7th June, 2023 being annexure P-9 to the writ petition passed by the respondent Customs Authority on the ground that the statements made in cross-examination of the two witnesses in question were not considered in the impugned order-in-original and petitioner was not allowed to cross-examine the third witness.

I have perused the impugned adjudication order and I find that it is not a case where the statements of two witnesses in question in the cross-examination were not considered. From the recording by the adjudicating authority it appears that the statements of the two witnesses in question were considered, it may be that the detailed reasons and discussion on those statements have not been made but these are matters of evidence and

the Writ Court in exercise of its Constitutional Writ Jurisdiction cannot act as a evidence appreciating authority. So far as not allowing the petitioner to cross-examine the third witness is concerned, Mr. Dey, learned advocate appearing for the Customs Authority submits that cross-examination of the third witness does not arise since his statement has not been relied upon by the adjudicating authority.

Considering the facts and circumstances of the case and submission of the parties and in view of availability of alternative remedy by way of statutory appeal under the Act, I am not inclined to entertain this writ petition and to grant any relief except granting liberty to the petitioner to file statutory appeal before the learned Tribunal within four weeks from date as prayed for by the learned advocate appearing for the petitioner and if petitioner files an appeal within the time stipulated herein subject to compliance of all formalities under the law, the appellate authority shall consider and dispose of the appeal on merit without raising the point of limitation. All the points raised by the writ petitioner in this writ petition are kept upon by the appellate authority.

With these observations and directions, this writ petition being WPO 1620 of 2023 is disposed of.

(MD. NIZAMUDDIN, J.)

TR/

