



WEB COPY

W.A. No.889 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.889 of 2023
and
CMP. No.8880 of 2023**

Vikas Sharma

... Appellant

v.

The Additional Commissioner of Customs,
Adjudication-Air,
O/o. the Principal Commissioner of Customs,
Commissionerate-I, Chennai Airport,
New Custom House, Meenambakkam,
Chennai-600 027.

... Respondent

Prayer : Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.34206 of 2022 dated 02.01.2023.

For Appellant : Mr.A. Ganesh
For Respondent : Mr.K.S.Ramaswamy,
Central Govt. Standing Counsel

JUDGMENT

(Judgment of the Court was made by *MOHAMMED SHAFFIQ,J.*)

We have heard the learned counsel for the appellant and the learned standing counsel appearing for the respondent and also perused the records.



2. The present writ appeal is filed challenging the order of the learned Judge passed in the writ petition, insofar as rejecting the appellant's contention that the impugned order-in-original dated 12.07.2022 suffered from violation of principles of natural justice inasmuch as the appellant's request for cross-examination of parties, whose statement has been relied upon, has not been considered nor was an opportunity of personal hearing granted, thereby suffers from arbitrariness falling foul of Article 14 of the Constitution of India.

3. The appellant was a Customs Officer in Anna International Terminal, Chennai. The Directorate of Revenue Intelligence, Chennai (hereinafter referred to as “DRI”) based on specific intelligence that 18 carriers were involved in gold smuggling from various countries such as Dubai, Malaysia, Sri Lanka and other countries, with the connivance of some Customs officers, maintained surveillance along with independent witnesses. Intelligence input was received that one individual was co-ordinating with two Customs officers, one of them being the appellant herein allegedly by passing on the photographs and flight details of the carriers. On being confronted, the appellant after initial denial of his involvement, is stated to have admitted that they planned to clear some passengers. The 18 carriers on arrival by various flights were intercepted and according to the department, they were carrying gold in paste form concealed in



their rectum. The carriers/ passengers opted for personal search and voluntarily accepted to eject the concealed packets. A statement was recorded under Section 108 of the Customs Act, 1962 (hereinafter referred to as "the Act") from the appellant on 20.02.2020, wherein it is stated that the appellant agreed that seizure Mahazar dated 19.02.2020 was drawn at Chennai Airport and on the basis of his admission of having secreted money in his house, search proceedings were initiated by the DRI officials at the appellant's residence. During the course of search at the appellant's residence, huge amount of cash is stated to have been recovered.

4. A show cause notice dated 17.02.2021 was issued proposing to impose a penalty of Rs.1 crore on the appellant under Section 112 (a)(i) of the Act. The appellant through his Advocate vide letter dated 09.03.2021 requested the Joint Director, DRI (CZU) to provide certified English Translation of the relied upon documents, which were in Tamil. The translated copies were furnished on 17.06.2021, after reminders vide letters dated 30.03.2021 and 05.06.2021. The appellant vide letter dated 17.02.2022 requested that he may be permitted to cross-examine the following personnel/ parties:

- i) Cross-examination of IO and SIO.
- ii) Cross-examination of AIU Officers posted in the shift of the noticee on 19.02.2020.



iii) Cross-examination of 18 passengers/ carriers.

iv) Cross-examination of Mr.P.Sathish Kumar.

v) Cross-examination of Deputy Commissioner (In-charge Shift) of the noticee on 19.02.2020.

5. The above request for cross-examination was followed up by a reminder vide letter dated 25.03.2022 reiterating the appellant's request for cross-examination of the above personnel/ parties. Thereafter, an interim reply dated 20.04.2022 to the show cause notice dated 17.02.2021, was submitted, stating that the appellant would submit its final reply within 15 days of cross-examination. As there was no response from the respondent, the appellant is stated to have filed an application on 18.08.2022 under RTI requesting the status of the impugned proceedings and his request for cross-examination and copy of the order passed, The concerned CPIO replied that the case was adjudicated and final orders passed in order-in-original No.120/2022-23 Commissionerate-I dated 12.07.2022.

6. The appellant on perusal of the order-in-original dated 12.07.2022 found that his request for cross-examination has been rejected on the premise that such request after 2 years from booking the case was only to delay and



protract the proceedings. It was further stated that the appellant had not chosen to avail the personal hearing, which was extended to him.

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7. Aggrieved by the above order, the appellant had preferred a writ petition in W.P.No.34206 of 2022 primarily on the ground that the said order suffers from violation of the principles of natural justice inasmuch as the appellant's request for cross-examination had been rejected without the appellant being informed of such rejection and also for the reason that personal hearing was not granted as contemplated/ mandated under Section 122 A of the Act. The learned Judge dismissed the said writ petition on finding that the question of personal hearing and several opportunities having been provided itself is in dispute. The Appellate Authority can examine the above disputed question of fact. Insofar as the submission on personal hearing, the learned Judge further found on examining Section 112 A of the Act, that the three adjournments mentioned therein are merely an outer limit/ cap on the number of adjournments and cannot be understood as mandating the officer to grant three adjournments. In other words, it was open to the adjudicating authority to complete the adjudication in less than three hearings as well. On the strength of the above finding, the learned Judge dismissed the writ petition, while making it clear that if the writ petitioner chooses to avail an alternate remedy by filing



appeal subject to fulfilling the statutory conditions relating to appeal, the same shall be disposed of by the appellate authority uninfluenced by the observations made in the writ petition.

8. It is this order of the learned Judge which is the subject matter of challenge in the present appeal on the ground that opportunity to cross-examine is a facet of principles of natural justice and non-consideration rather failure to communicate the acceptance or rejection of the appellant's request for cross-examination violates the principles of natural justice. Secondly, the failure to grant a personal hearing also violates the principles of natural justice. On the other hand, the impugned order records that several personal hearings were extended to the appellant, who failed to avail the same, despite the opportunities having been granted.

9. While we agree with the submission that cross-examination is also a part of/ facet of natural justice, however, there is no absolute right for cross-examination, for it would depend on the facts of each case. As found by the learned Judge, whether the appellant was granted personal hearing or not, turns out to be a disputed question of fact. The examination of such disputed question of fact is normally an exercise, which is beyond the realm of writ jurisdiction.



We also find that when there is an alternate remedy that is available, Courts would exercise restraint in entertaining the writ petitions. Further, entertaining the writ petitions is a matter of discretion and such discretion having been exercised by the learned Judge by rejecting the writ petition on the ground of existence of alternate remedy, this Court in appeal would normally be loathe in interfering with exercise of such discretion. Therefore, we are not inclined to interfere with the order of the learned Judge.

10. At this juncture, the learned counsel for the appellant seeks liberty of this court to file appeal before the Appellate Authority, within a time frame to be stipulated by this court.

11. In view of the above submission made on the side of the appellant, this court permits the appellant to file appeal before the Appellate Authority, within a period of 30 days from the date of receipt of a copy of this judgment. On filing of such appeal, the appellate authority shall consider the same, without raising any issue relating to limitation, if any, and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, as expeditiously as possible.



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12. Accordingly, the writ appeal stands disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
01.11.2023

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
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To
The Additional Commissioner of Customs,
Adjudication-Air,
O/o. the Principal Commissioner of Customs,
Commissionerate-I, Chennai Airport,
New Custom House, Meenambakkam,
Chennai-600 027.

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