IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.35708 of 2023
and
W.M.P.Nos.35690 & 35692 of 2023

M/s.Avana Surgical Systems Private Limited,
No.91, 2nd Floor, Sundar Nagar,
4th Avenue, Nandambakkam, Chennai,
Tamil Nadu 600 032.

... Petitioner

Vs.

Principal Commissioner of Customs,
Air Cargo Chennai VII,
Commissionerate, New Custom House,
Meenambakkam, Chennai 600 016.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the communication in F.No.ACC/ASST/BE/MISC/21/2023-GR 5B dated 30.09.2023 attributable to the respondent as the same is in clear violation of principles of natural justice and further to permit the petitioner company to cross examine the persons mentioned in the letter dated 25.08.2023 issued by the counsel for the petitioner to the respondent.

For Petitioner	:	Dr.S.Krishnanandh
For Respondent	:	Mr.Sai Srujan Tayi, Senior Standing counsel

ORDER

This writ petition has been filed challenging the communication dated 30.09.2023 attributable to the respondent.

2. Mr.Sai Srujan Tayi, learned Senior Standing counsel, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the petitioner had sought for the cross-examination of the officers, who had permitted for the clearance of the goods of the petitioner. However, the said request was refused by the respondent vide the impugned communication dated 30.09.2023. Hence, the present writ petition.

4. In reply, the learned counsel for the respondent would submit that after taking into consideration of the said request of the petitioner to cross-examine their own officers, the same was refused by the respondent for a reason that they are not going to rely upon the statements of the said officers and they are going to initiate the proceedings afresh.

5. In response to the above submission, the learned counsel for the petitioner would submit that since the statements of the aforesaid officers, who are all sought to be cross-examined, are in favour of the petitioner, the respondents are not intend to cross-examine them. Further, in support of his contention, he had also referred to the judgement of the Hon'ble Supreme Court in ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others*** reported in ***(2013) 4 SCC 465***.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. In the present case, it appears that the petitioner had requested

to cross-examine the officers. However, the said request made by the petitioner was rejected by the respondent, since they are not going to rely upon the statement of the said officers and they are intend to initiate the proceedings afresh. In such view of the matter, the question of cross-examination would not arise.

8. Further, the cross-examination of the said officers is necessary only when their statements are against the petitioner. In the present case, the statements of the said officers are said to have in favour of the petitioner and hence, there is no necessity of cross-examination those officers. That apart, it is up to the respondent to rely on the statements of the said officers or not. In such case, since the respondent is not at all going to rely upon the statements of the said officers, there is no need for cross-examination of those officers.

9. It was contended by the learned counsel for the petitioner that as per the judgement of the Hon'ble Apex Court in ***Ayaaubkhan Noorkhan***

Pathan (referred supra), the petitioner is certainly entitled for cross-examination. The relevant portion of the said judgement reads as follows:

> *"27. In K.L. Tripathi v. State Bank of India & Ors., AIR 1984 SC 273, this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also: Union of India v. P.K. Roy, AIR 1968 SC 850; and Channabasappa Basappa Happali v. State of Mysore, AIR 1972 SC 32).*
> *"*

10. A perusal of the above judgement makes it clear that if the statements of the said officers are relied upon by the respondent, the

cross-examination has to be permitted necessarily. However, in the present case, as stated above, the respondent is not bound to rely upon the statements of the said officers. That apart, the statements of the said officers are in favour of the petitioner. Hence, there is no necessity to consider the request made by the petitioner for cross-examination. In such view of the matter, this Court does not find any illegality in the impugned communication dated 30.09.2023 issued by the respondent.

11. In the result, this writ petition is dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

21.12.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To
Principal Commissioner of Customs,
Air Cargo Chennai VII,

Commissionerate, New Custom House,
Meenambakkam, Chennai 600 016.

KRISHNAN RAMASAMY.J.,

nsa

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