

04.07.2024
Item No.
M/L-17
Court No.5
Saswata

W.P.A. 12081 of 2024
M/s Loknath Gold Manufacturing & Anr.
Versus
Union of India & Ors.

Mr. Somnath Ganguly
Mr. T.K.Mitra
Mr. H.K.Pandey
Ms. Priyambada Singh

...petitioners

Mr. R.P.Mookerjee
Mr. S.Das

...For the Union of India

Mr. Kaushik Dey
Mr. Tapas Bhanja

...For the Customs authorities

1. The present writ petition has been filed challenging the order dated 5th February, 2024 passed by the respondent no.2.
2. On 22nd May 2024 when the matter was taken up for consideration, Mr. Ganguly, learned advocate appearing for the petitioners by placing before this Court an order dated 21st December 2023, appearing at page 122 of the writ petition, submitted that the customs authorities despite direction passed by this Court, did not appropriately dispose of the petitioners' representation. No adequate opportunity of hearing was given to the petitioners.
3. Today, at the time of hearing, Mr. Dey learned advocate appearing for the customs authorities by drawing attention of this Court to the order dated 5th February 2024 submits that the customs authorities had already disposed of the petitioners' representation dated 14th September 2023. According

to him although, an opportunity of personal hearing was afforded to the petitioners, the petitioners did not avail of the same. Such fact would corroborate from the aforesaid order itself.

4. It appears that by order dated 21st December 2023, a Coordinate Bench of this Court had directed the respondent no.2 to dispose of the petitioners' representation dated 14th September, 2023 by passing a reasoned and speaking order after giving opportunity of hearing to the petitioners and/or their authorized representatives. I, however, notice that the petitioners in paragraph 31 of the instant writ petition has categorically stated that although, efforts had been made by the petitioners to attend the hearing, unfortunately by reason of the delayed arrival of train at Howrah station due to heavy fog, the petitioners could not attend the personal hearing on 17th January 2024. This fact was duly communicated to the respondent no.2. Unfortunately, the respondent no.2 without granting any adjournment to the petitioners, had disposed of the said representation ex parte. Factum of the petitioners seeking adjournment by an email communication addressed to the Additional Commissioner of Customs (Preventive), CC (P) (being the respondent no. 2 herein) disclosing therein the ground of such adjournment, would corroborate from a print out of such email communication dated 17th January, 2024. The same as placed before this Court by Mr. Ganguly is retained with the record.

5. The above would demonstrate that the failure on the part of the petitioners to attend the personal hearing does not appear to be deliberate. In fact the petitioners had bona fide and justifiable reasons for not being able to attend the hearing. Unfortunately, the representation had been disposed of without the petitioners' presence, ex parte.
6. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I am of the view that since a Coordinate Bench of this Court, by its order dated 21st December 2023, had directed the respondent no.2 to dispose of the petitioners' representation in accordance with law by passing a speaking and reasoned order after giving opportunity of hearing to the petitioners and/or their representatives, the manner of disposal of the petitioners' representation by the respondent no. 2 does not appear to be proper keeping in view the spirit of the order passed by the Coordinate Bench of this Court on 21st December 2023.
7. In view thereof, the order dated 5th February 2024 is set aside with a further direction upon the respondent no.2 to consider and dispose of the petitioners' representation dated 14th September 2023 upon giving opportunity of hearing to the petitioners or its representative by passing a speaking and a reasoned order in terms of the direction passed by a Coordinate Bench of this Court on 21st December 2023, preferably within a period of 8 weeks from date.

8. With the above observations and directions, the writ petition being WPA 12081 of 2024 is disposed of.
9. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)