OD-8

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/410/2024

M/s. Agni Shanti Build Tech Private Limited
Versus
The Joint Commissioner of Customs & Ors.

BEFORE
The Hon'ble Justice RAJA BASU CHOWDHURY
Date: 1st August, 2024.

Ms. Anupa Banerjee, Adv.
Mr. Dipak Dey, Adv.
Mr. Aniket Ojha, Adv.
...for the petitioner
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
...for the respondents

THE COURT: 1. The present writ petition has been filed, inter alia, challenging the show cause notice dated 14th May, 2020 issued under Section 18(2) of the Customs Act, 1962 (hereinafter referred to as the "said Act") and the adjudication order in original dated 13th November, 2020.

2. It is the petitioner's case that in connection with a project submitted by the Government of Mizoram for the project "C/o Auditorium and Stadium at Serchip, Mizoram" for development of North Indian States including Sikkim, duly sanctioned by Government of India, the work order was executed by the National Building Construction Corporation Limited

(NBCC) and the petitioner was entrusted with the job of supply and installation of synthetic football field at the sports stadium, Serchip, Mizoram from Greenfield BV. The petitioner claims to have imported artificial turf for football at a cost of Rs.88,01,603.48 from Greenfield BV for installation of synthetic football field at the sports stadium, Serchip, Mizoram.

3. According to the petitioner, inasmuch as the project in question was awarded by the Ministry of Urban Development, Government of India to NBCC, who in turn had sub-contracted the job to the petitioner and since the goods imported by the petitioner were covered by the Notification No.146/94-customs Serial no.1, dated 13th July, 1994, the petitioner had claimed exemption of duty.

4. According to the petitioner, despite the fact that the Director of Sports and Youth Services, Mizoram, Aizawl by communication dated 9th January, 2017 addressed to the Assistant Commissioner of Customs (Port) and by a further communication dated 9th February, 2017 had confirmed that the petitioner despite being a private company, however, since, the goods imported were for the project awarded by the Ministry of Urban Development, Government of India to NBCC which had since sub-contracted the said job to the petitioner, the petitioner is entitled to exemption of duty, the demand-cum-show cause notice dated 14th May, 2020 was issued under Section 18(2) of the said Act. Although, the petitioner had duly responded to the same and had also appeared before the hearing officer, the hearing officer without considering the petitioner's response had

disposed of the show cause notice by passing an order in original dated 13th November, 2020.

5. Ms. Banerjee, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to paragraph 7 of the order in original dated 13th November, 2020 would submit that the said order records that no reply was received from the importer in response to the show cause notice dated 14th May, 2020. According to her, in absence of consideration of the response filed by the petitioner to the show cause notice, the entire object of granting opportunity to show cause stands frustrated. The aforesaid also constitutes violation of principles of natural justice.

6. Having regard to the aforesaid, it is submitted that this Court may be pleased to set aside the order impugned and remand the matter back to the authorities for reconsideration.

7. Mr. Dey, learned advocate appearing for the respondents, submits that despite the fact that the respondents had attempted to trace out the reply from the records, the reply could not be traced out. By referring to the order impugned, he submits that the submissions made by the petitioner in course of personal hearing were duly noted down.

8. Since, the contention of the petitioner as urged in course of personal hearing was noted, the order should not be set aside on the ground of non-consideration of the response. It is still further submitted that there is an efficacious alternative remedy in the form of an appeal. The petitioner has not bothered to challenge the aforesaid order by filing an appeal within the time prescribed. Since, the present writ petition has been

filed belatedly, this Court ought not to, in the given case, entertain this writ petition.

9. Heard learned advocates for the parties and considered the materials on record. Admittedly, in this case it is noticed that the petitioner had imported sports goods for a project which was awarded by the Central Government to NBCC and NBCC had subcontracted the job to the petitioner. The petitioner claims that the petitioner is entitled to an exemption and the goods imported by the petitioner is covered by Notification No.146/94-Customs Serial no.1, dated 13th July, 1994. Records reveal that the petitioner was given an opportunity of personal hearing by the Adjudicating Officer and after hearing the petitioner, a final order had been passed. Interestingly, however, the order records in paragraph 7 that importer has not responded to the show-cause notice. I may note that the very object of issuing a show-cause is to make the importer aware of the circumstances which the importer may be required to respond. In this case, the petitioner claims to have responded to the show-cause notice. At least, the respondents could not rebut the same. Although a personal hearing was given but non-consideration of such response by recording in the order that no reply was received appears to be a mechanical approach, apart from being violation of principles of natural justice.

10. Although, there is an Appellate Authority, however, as the order-in-original stands vitiated on the ground as noted hereinabove, I am of the view that the order cannot be sustained. The same is, accordingly, set aside and is remanded back to the Adjudicating authority for re-hearing.

The Adjudicating authority shall hear out and dispose of the matter on merits after giving an opportunity of hearing to the petitioner by taking into consideration the response given by the petitioner, preferably within 8(eight) weeks from the date of communication of this order.

11. With the above observations and directions, the writ petition stands disposed of.

(RAJA BASU CHOWDHURY, J.)

sm