

OD - 10

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT/199/2023
IA NO: GA/2/2023
M/S GRANADA AIR SERVICES PRIVATE
LIMITED AND ANR
VS
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th May, 2024

Appearance :
Mr.Arijit Chakraborty, Adv.
Mr. R.N. Banerjee, Adv.
Mr. Nilotpall Chowdhury, Adv.
...for the appellant.

Mr.Kaushik Dey, Adv.
Mr.Abdhradip Maity, Adv.
Ms. Shatabdi Sen, Adv.
...for the Customs Authority.

Mr. Aryak Dutt, Adv.
Mr.Tapan Bhanja, Adv.
...for the Union of India.

The Court : This intra-Court appeal by the writ petitioner is directed against the order dated 3rd April, 2023 in WPO/1176/2021. In the said writ petition the appellant had challenged the order of adjudication passed by the authority. The learned Single Bench observed that there is no question of providing any cross-examination since in the relevant part of the Order-in-Original confining to the writ petitioner no statement of any witnesses has been relied upon or taken into

consideration to whom the writ petitioner wants to cross-examine. Additionally, the learned Single Bench accepted the submission of Mr. Kaushik Dey, learned standing counsel that the order impugned in the writ petition is an appealable order. Therefore, the writ petition was dismissed with an observation that it will not be a bar on the part of the writ petitioner to avail the statutory remedy by way of appeal in accordance with law.

The learned advocate appearing for the appellant would strenuously contend that the role of the CHA ought to have been properly considered and opportunity of cross-examination ought to have been allowed. By placing reliance on the decision of this Court in the case of Commissioner of Customs, Airport and Admn. Kolkata Vs. Shri Himadri Chakraborty in CUSTA/4/2022 etc. dated 7th June, 2023 it is submitted that without cross-examination of the concerned persons, the adjudicating authority ought not to have been relied upon the statement. Admittedly, the appellant is not the only noticee in the proceedings as there were multiple notices one among them is the appellant. Therefore, the question would be as to what is the role of the appellant towards the customs broker in the transaction and a truncated challenge to the order of adjudication cannot be entertained in the writ petition when there are multiple notices. Furthermore, the role of the CHA qua the

import/importer is a question of fact to be determined and, therefore, the appellant has to necessarily avail the appellate remedy available under law by preferring an appeal to the Tribunal.

In the light of the above, the appeal is dismissed and the dismissal of the writ petition is affirmed. However, the findings recorded by the learned Single Bench in the impugned order stand vacated and all the issues are left open. The appellant is directed to file the appeal before the Tribunal within a period of 90 days from the date of receipt of the server copy of this order and if the same is filed, the Tribunal shall entertain the appeal without rejecting the same on the ground of limitation.

It is made clear that all points are left to be agitated before the learned Tribunal in the appeal which has been directed to be filed.

In the result, the appeal [APOT/199/2023] stands dismissed and the connected application also stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

