



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4530 OF 2024

Masterstone LLP and Anr. ...Petitioners

Versus

The Commissioner of Customs
(APSC) Adjudication Cell and Ors. ...Respondents

WITH

WRIT PETITION NO. 4878 OF 2024

M/s Satcom Info Tech
Private Limited and Anr. ...Petitioners

Versus

The Commissioner of Customs
(APSC) Adjudication Cell and Ors. ...Respondents

Mr Aashish Kamat, Senior Advocate, a/w Shalaka Patil, Ankit Pathak, PSS Bhargava, Harish Khanchandani i/b Trilegal, for the Petitioners in both Writ Petitions.

Mr Siddharth Chandrasekhar, a/w Sangeeta Yadav, Ashutosh Mishra, for the Respondents in both Writ Petitions.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 04 December 2024

PC:-

1. Heard learned counsel for the parties.
2. Learned counsel for the parties agree that a common order can dispose of these petitions.
3. Mr Kamat, learned senior advocate for the petitioners, states on instructions that relief in terms of prayer clause (a)

is not being pressed given the Hon'ble Supreme Court's order dated 07 November 2024 in the case of **Commissioner of Customs vs. Canon India Private Limited (Review Petition No. 400 of 2021)**).

4. Mr Kamat, however, submits that the impugned order dated 28 June 2024 made by the 1st respondent grossly violates the principles of natural justice and fair play. He submits that the petitioners, from October 2023 onwards, have been requesting the furnishing of documents, among other things, relating to 3 seizure inspections and also panchnama etc. After repeated requests, the petitioners were offered a physical inspection of the consignments on 03 May 2024. However, crucial documents were never furnished to the petitioners. Mr Kamat submits that as a result, the petitioners could not file an effective reply and otherwise show adequate cause in the matter. He submits that since the impugned order grossly violates principles of natural justice, the petitioners should not be relegated to the alternate remedy of appeal, which is otherwise available to challenge the impugned order.

5. We have considered the above contentions and perused the record. This is not a case where we should entertain the petitions rather than relegating the petitioners to avail of alternate appeal remedies. Whether documents were indeed not furnished as claimed, whether such documents were relevant, whether they were relied upon for making the impugned order, whether they were vital to the Petitioner's defence, whether any real prejudice resulted from the alleged non-furnish are all matters that are best examined by the appellate authority.

6. Merely alleging that some documents were not furnished is insufficient in such matters. The impact of the allegedly non-furnished documents also needs to be considered. This is not a case of “no notice or no opportunity” even going by the allegations in the Petition. At the highest, this is a case where the allegations concern a lack of adequate opportunity. In such a case, the Petitioner must plead and establish prejudice because there is nothing like a mere technical breach of natural justice.

7. We get a prima facie impression from the materials on record that the petitioners were most reluctant to file even a reply to the show cause notice and constantly sought time to file such a reply. Most times, the time was granted, and adjudication of the show cause notice was deferred. Inspection was also offered to the petitioners. Instead of raising a defence, if any, the Petitioner focused entirely on developing a case to eventually allege a failure of natural justice. In any event, we do not propose to conclude the issue of breach of natural justice at this stage. However, we would like to observe that this is not some case where the breach is apparent on the face of the record.

8. To determine whether there is a breach, the appellate authority must consider various factual aspects, including whether any documents relied upon in the impugned order or any documents that might have assisted the petitioners' defence were unduly withheld from the petitioners. The appellate authority will also have to consider the issue of prejudice in such matters.

9. Section 129B of the Customs Act, 1962, confers substantial powers on the Appellate Tribunal. The Tribunal is empowered to pass such orders as it thinks fit, confirming, modifying, or annulling the decision or order appealed against. The Tribunal may also refer the case back to the authority that passed such decision or order with such directions as it thinks fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. Therefore, considering the scope of powers of the Appellate Tribunal and the facts in the present case, no case is made to entertain these petitions or not relegate the petitioners to avail of the alternate remedy of appeal. The remedy of appeal available to the Petitioner is, thus, efficacious.

10. Still, in paragraph No. 50 of Writ Petition No. 4530 of 2024, the petitioners have made a misleading statement that they have no alternate remedies available to them. These are petitions drafted and settled by professionals. The impugned order states clearly that the petitioners could file an appeal against the same to CESTAT. The averments in the Petition are, therefore, misleading.

11. At the highest, the petitioners could have pleaded that an alternate remedy is provided by law. Still, the same is not efficacious for the reasons now argued by Mr Kamat, learned counsel for the petitioners. However, making an omnibus and misleading statement about no alternate remedy cannot be appreciated.

12. In **Oberoï Constructions Ltd vs. Union of India and Ors. and connected matters [Writ Petition (L) No. 33260 of 2023]**,

we summarised several decisions concerning the exhaustion of alternate remedies. We noted the increased tendency to rush to this Court, bypassing the statutory remedies available. The Hon'ble Supreme Court held that such a tendency should not be encouraged. Therefore, we decline to entertain these petitions, adopting the reasoning in the decision and applying the same to the facts and circumstances in this case.

13. We dismiss these petitions for all the above reasons, leaving the petitioners free to appeal the impugned order dated 28 June 2024.

14. Mr Kamat stated that the appeals would be filed within four weeks from today. Suppose such appeals are indeed filed within four weeks of today after complying with all the legal requirements. In that case, the appellate authority will consider them on merits and in accordance with the law without advertting to the limitation issue. This is because these petitions were filed within the limitation period prescribed for instituting an appeal.

15. All contention of all parties, except those contentions decided by the Hon'ble Supreme Court in its order dated 07 November 2024 in *Canon India Private Limited* (supra), are kept open.

16. All concerned to act on the authenticated copies of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)