



\$~114

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9255/2024**

MAHENDRA KUMAR THAKKERPetitioner

Through: **Mr. Deepak Gandhi, Advocate.**

versus

PRINCIPAL COMMISSIONER OF CUSTOMS

& ANR.Respondents

Through: **Mr. Harpreet Singh, SSC with
Mr. Rakesh Kumar Antil, Mr.
Amit Kumar, Ms. Amrita
Bhadoria and Ms. Gayatri,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **09.07.2024**

CM APPL. 37919/2024 (Ex.)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 9255/2024 & CM APPL. 37918/2024 (stay)

1. This writ petition has been preferred principally assailing the order dated 05 June 2024 in terms of which the application of the petitioner conveying a request for cross-examination as embodied in his letter dated 23 May 2024, has come to be rejected. As we read the order impugned, we find that the Adjudicating Authority has, while dealing with the aforesaid request, observed as follows:-

“1. Please refer to your letter dated 23.05.2024 wherein request was made to cross-examine certain persons as detailed in the letter. In this regard, it is informed that the Adjudicating Authority



has denied the request of cross examination. Further, the Adjudicating Authority, Ms. H.K. Prasad, Commissioner, Customs Preventive, New Delhi has fixed Personal Hearing in your case on 04.07.2024 at 11:30 AM.”

2. Mr. Gandhi, learned counsel for the petitioner, has taken us through the record and drawn our attention not just to the letter on 23 May 2024 but also the panchnamas to contend that the factum of the article which was recovered being gold was itself seriously disputed by the writ petitioner. He submitted that while the original panchnama had referred to the sealed article as yellow metal, the second panchnama which came to be drawn without any notice to the writ petitioner referred to the seized article as gold. It is in the aforesaid backdrop that Mr. Gandhi submitted that there was an imperative need for the writ petitioner being afforded the opportunity to cross examine the persons whose names have been detailed in the letter dated 23 May 2024.

3. On hearing Mr. Harpreet Singh, learned counsel who appears for the respondents and on going through the record, we find at this stage that the Adjudicating Authority has failed to examine the letter dated 23 May 2024 in its correct perspective. There is also an evident failure to record and assign any reasons for rejection of the request for cross examination that was made. The impugned order, in our considered opinion, therefore, is liable to be quashed and set aside on this short ground alone.

4. We consequently allow the instant writ petition and quash the order dated 03 May 2024 insofar as it rejects the prayer for cross examination. We direct the Adjudicating Authority to examine the letter dated 23 May 2024 afresh and in accordance with law.

5. The Adjudicating Authority shall proceed in the matter with due



notice to the writ petitioner. It shall also ensure that the aforesaid application is disposed of before commencement of hearing on merits subject to the petitioner not seeking any unnecessary adjournments and cooperating in the disposal of the said application.

6. All rights and contentions of parties in respect of merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 9, 2024/vp