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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26594 of 2024

Abhishek Goyal
Versus
Union of India Ors.

Mr. Arijit Chakrabarti
Ms. Minlotpal Chowdhury
Mr. Prabir Bera
... For the petitioner

Mr. Sujit Mitra
Mr. Soumen Bhattacharjee
Mr. Ankan Das
Ms. Shradhya Ghosh
... For Union of India

Mr. Uday Sankar Bhattacharya
Mr. Abhradip Maity
... For the respondents/customs
authorities.

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondent no.3 to withdraw/cancel the impugned order in original dated 24th October, 2024.
2. The petitioner is engaged in the business of import of Areca/Beetle nuts. In usual course the petitioner had imported roasted Areca nuts from foreign supplier under commercial invoices as detailed in the petition.
3. At the instance of the customs authorities, sample of the goods imported were sent for testing and the consignment was put on hold. A detention order under Section 110 of the

Customs Act, 1962 (hereinafter referred to as the “said Act”) was issued on 28th March, 2024. The petitioner had since, prayed for provisional release of the goods in terms of Section 110A of the said Act. Since, no steps were taken by the respondents, a writ petition was filed which was registered as WPA 15177 of 2024. By order dated 6th August, 2024, the writ petition was disposed of, directing the adjudicating authority to consider the petitioner’s application for provisional release.

4. Since then the petitioner was served with a show-cause notice dated 7th August, 2024 under Section 124 of the said Act. Though the show cause mentioned the list of relied upon documents and the copies of relied upon documents were enclosed, however, since the same were not supplied to the petitioner, the petitioner by an e-mail communication dated 9th August, 2024 had requested the respondents to provide the petitioner with the copies of the documents relied upon by the respondents in the show cause. Subsequently, by a further letter in writing dated 1st October, 2024 the petitioner once again requested the respondents to supply the relied upon documents which form part of the show cause, inter alia, claiming

therein that despite the previous e-mail dated 9th August, 2024, the relied upon documents forming part of the show cause had not been supplied to the petitioner. According to the petitioner, not only did the respondents proceed with the final adjudication of the show cause without supplying the petitioner with copies of the relied upon documents, the authorities also did not accede to the prayer of the petitioner for drawing fresh samples in adequate number in the presence of the petitioner from the consignment standing at ICD, Durgapur in accordance with law for the same to be sent to any FSSAI accredited laboratory for verification of standard of imported consignment.

5. Mr. Bhattacharya, learned advocate appearing on behalf of the respondents/customs authorities by placing before this Court paragraph 4.7 of the order impugned would submit that the order itself reveals that along with the show cause notice the petitioner was supplied the relied upon documents, however, to avoid controversy Mr. Bhattacharya, in course of hearing, has supplied the petitioner with the copy of the list of relied upon documents, along with the copies of the relied upon documents. The copies of such documents

have already been placed before this Court and have been taken on record.

6. Heard the learned advocates appearing for the respective parties. Although, Mr. Bhattacharya learned advocate representing the respondents by placing reliance on the order impugned has asserted that the petitioner had been supplied with the relied upon documents, however, the contemporaneous e-mail/letters written by the petitioner complaining non supply of relied upon documents had not been responded to by the adjudicating officer and a mere assertion made in the order in absence of any response, raises more than an element of doubt as regards supply of the relied upon documents. The case made out by the respondents that the petitioner was served with the relied upon documents does not appear to be a plausible one. Nothing has been placed before this Court to demonstrate that the petitioner had been supplied with the relied upon documents.

7. Taking note of the fact that the decision was rendered by the adjudicating officer, being the respondent no.3, on 24th October, 2024 without supplying the petitioner with the copy of the list of documents relied upon, and the copies of the

documents, I am of the view that the order dated 24th October, 2024 cannot be sustained and the same is set aside with a further direction upon the respondents to re-adjudicate the aforesaid show cause by giving an opportunity of hearing to the petitioner in accordance with law. However, at the same time, since the petitioner intends to have a fresh sample taken, I am of the view to iron out all differences and in the interest of justice, it would be just and reasonable to direct the respondents to draw fresh samples from the petitioner's consignment standing at ICD, Durgapur, in presence of the petitioner upon prior notice to the petitioner in accordance with law and to send the same to any FSSAI accredited laboratory and the test report thereof be also supplied to the petitioner prior to offering the petitioner an opportunity of personal hearing.

8. In view of the direction as aforesaid, the steps taken by the respondents for recovery of arrears arising out of the adjudication order in original dated 24th October, 2024 stands quashed.
9. It is expected that the entire adjudication process shall be completed by the respondents

within a period of four months from the date of communication of this order.

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

11. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)