OD–15

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTI0N
ORIGINAL SIDE

WPO/375/2025

CHANDRAKANT TRIPATHI
VERSUS
UNION OF INDIA & ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date : 17th July, 2025

Appearance :
Mr. N. Chowdhury, Adv.
Mr. P. Bera, Adv.
Mr. D. Banerjee, Adv.
Mr. S. Bhattacharya, Adv.
...for the petitioner
MrUday Sankar Bhattacharya, Adv.
Mr. Abhradip Maity, Adv.
Ms Banani Bhattacharya, Adv.
Ms. Shatabdi Sen, Adv.
...for the respondent Nos.2, 3 & 4/ Customs Authority

1. Challenging the order passed under Section 124 of the Customs Act, 1962 (hereinafter referred to as the said Act) dated 28th February, 2025, the instant writ petitioner has been filed.

2. The petitioner claims to be an Import Manager and works in a freight forwarding company and was involved in the importation of the betel nuts which has been smuggled into the country by misdeclaring such goods in one Nepal bound transshipment container of M/s. Shiva Sai Medi Enterprise Pvt. Ltd.

3. Although, an appellate remedy is available, the petitioner has approach this Court as according to the petitioner the order in original has been passed in violation of principles of natural justice.

4. Mr. Chowdhury, learned Advocate representing the petitioner has drawn attention of this Court to the show cause notice issued under Section 124 of

the said Act. From the aforesaid show cause notice, it would transpire that the petitioner had been implicated by trying to engage the customs broker for the purpose of release/delivery orders for clearance of smuggled cargo of betel nuts on the basis of wrong documents as received by him from Sudhir Kumar Pandey, Anil Kumar Dixit and Manish Dixit. It is also alleged that the petitioner has mediated the chain of smuggling and abetted the illegal trade by way of omission and has become liable for penalty under Section 112(a), 112(b) and also under Section 114AA of the said Act. By drawing attention of this Court to the response to the show cause notice filed by the petitioner, Mr. Chowdhury would submit that the petitioner had requested the adjudicating authority to permit him to cross-examine Sudhir Kumar Pandey and Anil Kumar Dixit but the authority without adhering to such request had decided the case. According to him, the order impugned though implicates the petitioner, does not disclose the basis of such implication, on such ground also the order cannot be sustained.

5. Mr. Bhattacharyya, learned Advocate appears on behalf of the respondents. He submits that the petitioner by-passing the statutory remedy cannot be permitted to invoke the extra-ordinary writ jurisdiction of this Court. From the order impugned and the response filed by the petitioner, it would transpire that no specific reason has been disclosed by the petitioner and the basis on which the request for cross-examination has been made. This apart, he would submit that in the order itself specific reason had been provided for holding the petitioner liable. Thus, having not filed any appeal, no relief should be afforded to the petitioner.

6. I have heard the learned Advocates for the respective parties and considered the materials on record. I find that the petitioner has been implicated in connection with smuggling of goods into India. From the show cause, it would transpire that the petitioner was implicated of mediating the smuggling chain and abetting illegal trade. I find that the petitioner claims ignorance of the smuggling and had duly responded to the show cause. Although, in his response, he had not identified specific reasons for cross-examining Sudhir Kumar Pandey and Anil Kumar Dixit, however, the said issue was duly considered by the adjudicating authority. It appears that the adjudicating authority on the basis of materials on record and by noting that the petitioner was involved in ensuring release and delivery order for clearance of smuggled cargo of betel nuts on the basis of wrong documents as received by him from Sudhir Kumar Pandey, Anil Kumar Dixit and Manish Dixit had concluded that he had mediated in the chain of smuggling and had abetted the illegal trade. I also find that the adjudicating authority in paragraph 3.4.5(ii) has recorded reasons for not allowing the cross-examination. He has also categorically noted in the aforesaid order that the petitioner did not provide any grounds to justify the need for cross-examination which fact is also admitted by the petitioner.

7. Although, Mr. Chowdhury has stressed on the scope of Section 138B of the said Act to hold out that before implicating the petitioner, the authorities ought to have admitted the statements of the witness, I find that the scope of Section 138B provides for the relevancy of statements made and signed by a person before a designated officer of customs. Mr. Chowdhury could not identify in the instant case as to why the statements given by Sudhir Kumar

Pandey and Anil Kumar Dixit are not relevant especially having regard to the fact that the order impugned was not challenged by the petitioner on merits before an appellate authority. On such ground, I am unable to accept such contention of Mr. Chowdhury.

8. In view thereof, the writ petition fails. There shall be no order as to costs.

9. At this stage, Mr. Chowdhury would seek liberty to approach the appellate authority. I am of the view that if law permits, the petitioner may approach the appellate authority in accordance with law, however, the issues decided herein shall not be reopened.

(RAJA BASU CHOWDHURY, J.)

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