Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9550 OF 2025

Aditya Automation …Petitioner

Versus

Principal Commissioner of Customs
Import Mumbai Customs Zone III …Respondent

Mr S S Patil, *(through VC), for the Petitioner.*

Mr Ram Ochani, *with Mr Sangeeta Yadav & Mr Umesh Gupta, for the Respondent.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 21 July 2025

PC:-

1. Heard Mr Patil for the Petitioner and Mr Ochani for the Respondent.

2. This Petition challenges the order dated 28 May 2025 made by the Principal Commissioner of Customs.

3. The impugned order is appealable to the Appellate Tribunal under Section 129A of the Customs Act, 1962.

4. Mr Patil however submits that the impugned order is wholly without jurisdiction because the Principal Commissioner has refused to follow the Advance Ruling Authority's ruling on the alleged ground that the same was based on misrepresented facts. He further submitted that at least three certificates issued by charter engineers were produced, but the same have been wished away without bothering to obtain any expert evidence to the contrary. Mr Patil submits that non-consideration of such relevant material in the form of expert evidence amounts to a breach of natural justice.

5. Mr Patil submits that although the Petitioner has an alternative remedy, since the impugned order is entirely without jurisdiction and was made in breach of the principles of natural justice, the principles in **Whirlpool Corporation Vs Registrar of Trade Marks**[1] and **Oberoi Constructions Ltd Vs Union of India & Ors**[2] would apply, and the Petitioner should not be relegated to the alternative remedy under the statute.

6. Mr Ochani submits that there is no question of the impugned order being without jurisdiction, and in any event, factual issues will have to be examined. He submits that the Petitioner was duly issued a show cause notice and was heard by the Principal Commissioner. Therefore, this is not a case of violation of natural justice.

7. We have considered the rival contentions and perused the material on record.

8. The argument regarding the impugned order being wholly without jurisdiction cannot be accepted at face value. For effective consideration of this argument, investigation into facts, at least to a limited extent, would be necessary. The

---

1 1998 8 SC 1

2 (2025) 137 GSTR 601

Advance Authority's rulings are ordinarily confined to the facts in which they came to be issued. The issue of whether the ruling would apply to the facts at hand would require investigation, which can be best undertaken by the Appellate Tribunal under the Customs Act.

9. Similarly, this is not a case where the Petitioner was not issued any show cause notice or that the Petitioner was not heard before the impugned order was made. The argument that some material, which was relevant, has not been considered can always be raised in appeal and on this ground, the usual practice of exhaustion of alternate statutory remedies cannot be deviated from.

10. To bring the matter within the legal principles laid down in either *Whirlpool* (supra) or *Oberoi Constructions* (supra), the party must make out a case that the impugned order or notice is ex facie without jurisdiction or that the breach of natural justice is patent and admits of no serious dispute, particularly on factual aspects. In this case, we are concerned that a case of that degree has not been established by the Petitioner.

11. Furthermore, we note that under Sections 129A and 129B of the Customs Act, the Appellate Tribunal has been conferred wide and substantial powers to pass orders in appeal as it deems fit, confirming, modifying, or annulling the decision or order appealed against. The Appellate Tribunal is also empowered to refer the case back to the authority that passed the decision or order, with directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

Thus, the statutory remedy provided under the Customs Act is efficacious, and no case is made out to circumvent the same.

12. For the above reasons, we decline to entertain this Petition but leave it open to the Petitioner to avail of the alternate remedy under the Customs Act, if the Petitioner so chooses.

13. All contentions of all parties on merits are left open. Even the observations in this order are for the limited purpose of deciding the issue of exhaustion of alternate remedies, and the observations are not intended to reflect upon the merits and demerits of the matter.

14. This Petition is accordingly dismissed with liberty to the Petitioner to avail of the alternate statutory remedy, if it so desires.

(Jitendra Jain, J) **(M.S. Sonak, J)**