
(2018) 06 CAL CK 0027
In the Calcutta High Court
Case No : Writ Petition No. 129 of 2018

Ankit Kapoor

APPELLANT

Vs

Commissioner Of Customs (Port) W.B., Kolkata

RESPONDENT

Date of Decision : 07-06-2018

Acts Referred:

Customs Act, 1962 — Section 108, 122, 124

Citation : (2018) 06 CAL CK 0027

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Nilotpal Chowdhury, Debi Parbat, Somnath Ganguli, Sanjukta Gupta

Final Decision : Disposed Of

Judgement

The Court : An order in original dated December 28, 2017 passed by the Commissioner of Customs (Port), Customs House, Kolkata, is under

challenge in the present writ petition. Â Learned Advocate appearing for the writ petitioner draws the attention of the Court to the fact that, the

impugned order records that, the petitioner had asked for cross-examination of few witnesses which were not granted.

Learned Advocate appearing for the respondent submits that, the statement of the witnesses were taken under Section 108 of the Customs Act, 1962.

The petitioner was aware of such statement and did not ask for crossexamination.

An investigation is undertaken by an officer duly authorized in that behalf with regard to any infraction of Customs Act, 1962. It is in the course of

such investigation, statements of witnesses are taken under Section 108 of the Customs Act, 1962. The investigating authority on the basis of materials

available, including statements under Section 108 of the Customs Act, 1962, issues a show cause notice.

The show cause notice is issued under Section 124 of the Customs Act, 1962 and is to be adjudicated upon by the persons delineated under Section

122 of the Customs Act, 1962. In the adjudicating proceedings, the prosecution is entitled to refer to and rely upon evidence of natural persons.

It is at that material point of time, that is, when evidence of natural persons is relied upon before the adjudicating authority that, the prosecution should

produce the natural persons witnesses and offer cross-examination to the delinquent. In the facts of the present case, it does not appear that, the

prosecution had offered the petitioner herein an opportunity to cross-examine the witnesses produce on their behalf.

In such circumstances, in my view, the impugned order stands vitiated by breach of principles of natural justice. The right of cross-examination, is one

of the ingredients of the principles of natural justice and ought to be adhered to during an adjudication proceedings. In such circumstances, the

impugned order is set aside.

The authorities are at liberty to proceed afresh from the stage of adjudication. In the event, the prosecutions rely upon any evidence of any natural

person at the adjudicating process, it will offer cross-examination of such natural witness to the petitioner, in accordance with law. It is open to the

petitioner to either accept the right of cross-examination or refuse the same. WP No. 129 of 2018 is disposed of. No order as to costs.