
(2014) 05 CAL CK 0027
In the Calcutta High Court
Case No : W.P. No. 338 of 2014

Ashoke Enamel and Glass Work Pvt. Ltd.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Customs Act, 1962 — Section 122A

Citation : (2014) 307 ELT 40

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Arijit Chakraborty and Nirmal Chowdhury, Advocate for the Appellant; P.K. Roy, T.M. Siddiqui and Kaushik De, Advocate for the Respondent

Judgement

Harish Tandon, J.—The Court: Let supplementary affidavit filed in Court today be kept on record. The order-in-original, dated 31st March, 2014 passed by the Commissioner of Customs (Port) directing the seizure of Red Sanders Wood which is prohibited. Though it is reflected in the said show cause notice that the petitioner shall have an opportunity to inspect the documents within fifteen days from the date of service and shall further give a reply within thirty days, but the notice of hearing was issued to the petitioner on 7th March, 2014. By the said notice the said authority fixed the date of hearing on 13th March, 2014. By a letter dated 12th, March 2014 the petitioner sought for an adjournment and prayed for fixation of the date in the month of April, 2014. It is undisputed that on 1st April, 2014 the petitioner filed reply to the show cause notice and was later on served with the copy of the impugned order-in-original passed on 31st March, 2014.

2. Section 122A of the Customs Act, 1962 empowers the adjudicating authority to grant time to the parties and adjourned the hearing for the reasons to be recorded in writing whereas proviso appended thereof restricts the number of adjournments to be not more than three times. The date of hearing was fixed for the first time on 13th March, 2014 when an adjournment was sought till the

month of April, 2014. The authorities neither informed the petitioner that a prayer for adjournment is rejected nor communicated the next date of hearing though under the aforesaid provisions the adjournment up to three times can be granted. The respondent tried to submit before this Court that since the show cause notice was directed to be filed within thirty days from the date of service of the show cause notice and the same having not filed, the authority proceeded to decide the matter. In fact the shelter is taken under paragraph 22 of the show cause notice, which this Court feels that it would be relevant to quote the same as:--

"22. They should clearly state in their written reply to this notice as to whether they desire to be heard in person before the case is adjudicated. If no reply to this notice is received thirty (30) days from the date of receipt of this notice or if they do not appear before the Adjudicating Authority for Personal Hearing while the case is posted for hearing, the case will be decided on the basis of available records without any further reference to them."

3. The meaningful reading of the aforesaid paragraph not only indicate that the reply to the show cause notice is to be filed within thirty days from the date of the receipt of the notice, but an opportunity to appear before the adjudicating authority for personal hearing is also provided therein. The hearing was fixed on 13th March 2014 nearly one year after the issuance of the show cause notice. On the very first date the petitioner sought for an adjournment indicating the grounds but the authority proceeded to decide the matter on 31st March 2014 without intimating the petitioner the date fixed for passing such order.

4. This Court, therefore feels that the authorities acted in the contravention of the provisions contained u/s 122A of the said Act in not granting the adjournment though provided for. Furthermore, the petitioner was unheard as the reply came to be filed on the next day of the impugned order which was not allowed to be taken on the Court.

5. This Court, therefore, finds that the entire action of the authority in passing the order impugned so far as it relates to the petitioner is concerned is not sustainable and required to be set aside. Accordingly the order impugned is set aside to the extent it operates against the petitioner. The authority shall fix a date for personal hearing after taking the reply into the record and shall afford an opportunity of hearing to the petitioner and shall pass the order by giving reasons. The entire exercise shall be completed by the authorities within four weeks from the date of communication of this order.

6. It goes without saying that the authority shall decide the matter independently without being influenced by any observations made herein. With these observations the writ petition is disposed of. No Costs.