(1996) 06 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. 2033 of 1995

Seth Enterprise Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:
Customs Act, 1962 — Section 124

Citation : (1997) 58 ECC 10 : (1996) 88 ELT 652

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Ashoke Gupta and Bidyut Dutta, for the Appellant;Ashutosh Dave and B. Samaddar, for the Respondent

Judgement

Tarun Chatterjee, J.—On a very technical point, I am of the view that the order passed by the adjudicating authority in the adjudication proceedings u/s 124 of the Customs Act should be liable to be set aside, although I am aware that the final order passed in the said proceedings is open to be challenged in appeal.

2. It is not in dispute that on 15th November, 1995, a learned Single Judge of this Court disposed of a writ application, being Writ Petition No. 1971 of 1995, by passing the following order :

"The petitioner shall file its reply to the writ application within 13-6-1995, as contained in Annexure "D" to the writ application, within 3 weeks from date. The adjudicating authority shall fix a date of hearing on the date on which the petitioner files the reply by hand. In the event the petitioner falls to file the reply without any cogent reason, it would be open to the respondents to proceed ex parte against it.

The adjudicating authority shall dispose of the matter, in terms of the provisions of the Customs Act at an early date and preferably within a period of six weeks after filing of the reply by the petitioner."

There is no dispute that this order was passed by the learned Single Judge in presence of the learned Counsel for the respondents.

3. It is now an admitted position that the final order passed in the adjudication proceedings u/s 124 of the Customs Act was so passed on 8th September, 1995 and the same was despatched to the writ petitioner for service of the said order on 16th November, 1995. It is not in dispute that no opportunity of hearing was at all given to the writ petitioner. It is now well-settled that even if there is a provision for filing of appeal against the final order passed u/s 124 of the Customs Act, even then the writ Court retains the jurisdiction to decide such order if it is found that there is violation of the principles of Natural justice.

4. In this case, as noted hereinabove, the writ petitioner was not at all given any opportunity of hearing before the aforesaid order of adjudication was passed by the Commissioner of Customs. Section 124(c) of the Customs Act clearly contemplates an opportunity of hearing to be given to the writ petitioner.

5. The learned Counsel appearing on behalf of the Customs Authority draws my attention to the fact that in the month of August, 1996, the writ petitioner was directed to file a reply to the show cause notice which they had failed to submit. Therefore, according to learned Counsel for the Customs Authority an opportunity of hearing was given to the writ petitioner which was not availed by it. Even assuming that the writ petitioner in spite of direction did not submit its reply to the show cause notice, even then under the provisions of the Customs Act, before passing final order in the said adjudication proceedings, the Respondents ought to have given an opportunity of hearing to the writ petitioner.

6. In that view of the matter, the order of adjudication is set aside. The writ application is allowed to the extent indicated above and further directions are given in the following manner:

(a) The reply to the show cause notice be filed by the writ petitioner within 2 weeks from this date.

(b) The adjudicating authority shall dispose of the adjudication proceedings within one month thereafter positively after giving hearing to the writ petitioner and after passing a reasoned order in accordance with law without giving any unnecessary adjournment of the hearing of the adjudicating proceedings to the writ petitioner.

7. It is made clear that I have not gone into the merits of the disputes raised by the writ petitioner against the final order of adjudication which is being set aside by this order. All points are kept open to be decided by the Commissioner of Customs in the adjudication proceedings.

8. For the reasons aforesaid, the impugned order is set aside. The writ application is allowed to the extent indicated above.

9. There will be no order as to costs.

10. All parties shall act on a xerox signed copy of this dictated order upon the

usual undertaking.

