

Item no. 03

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 48 of 2023

with

IA No. CAN 1 of 2023

Principal Commissioner of Customs, Airport and ACC
Commissionerate, Kolkata

vs.

Akshoy Kumar Ghosh & Sons.

Appearance:

For the Appellants : Mr. Kaushik Dey
Mr. Tapan Bhanja

For the Respondents :

Heard on : 15.03.2023

Judgment on : 15.03.2023.

T.S. Sivagnanam J.:

1. This intra-Court appeal filed by the Revenue is directed against the order dated 01.12.2022 passed by the learned Single Judge in WPA 26090/2022. By the said order the learned Single Bench directed the Chief Principal Chief Commissioner of Customs to appoint another officer having the same rank to hear the case of the respondents/writ

petitioners relating to suspension of their license. The learned Single Bench came to the said conclusion because the authority who had issued the post-decisional hearing notice on suspending the license of the respondents/writ petitioners custom broker is the same authority, who has drawn the offence report against the respondents/writ petitioners which appears to have been the basis for the action initiated under the provisions of CBLR, 2018.

2. We have heard learned counsel for the parties. There are two views, which are possible in the matter. The first view is that if both the officers are one and the same person, it may give an impression that the officer may be judging his own cause while considering the correctness of the submission made by the respondent/writ petitioner in the post-decisional hearing offered to them upon suspension of the customs broker license. The second view which is possible that if both the officers are one and same person and if he is discharging duties under two different and distinct capacity under two enactments whether it can be termed that he will be judging his own cause, in our view this controversy need not be gone into for the simple reason that the post-decisional hearing should be an effective hearing and the principles of natural justice have to be followed and any iota of bias or prejudice should not surface in the decision making process. Therefore, we agree with the ultimate conclusion arrived at by the learned Single Judge by directing the Chief Principal Chief Commissioner of Customs to appoint another officer to adjudicate the notice. However, we are of the clear

view that the order passed in the writ petition cannot be taken to be one laying down the legal principle. In fact, the following are some of the grounds which are raised by the department in this appeal:

“VI. For that the learned Single Judge erred in not appreciating that in case of any offence committed by any Customs Broker (CB) under Customs Broker Licensing Regulations, 2018, at the Airport Commissionerate, the investigation is conducted at the overall supervision of Commissioner of Customs (Airport & Admin) and the offence report is released for information and subsequent proceedings under the overall supervision of Commissioner of Customs (Airport & Admin). In these cases, the further process of adjudication is completed by Commissioner of Customs (Airport & Admin) himself. As such, if the order dated 01.12.2022 passed by the learned Single is acted upon, then by logic, all the Orders passed against the CB by the Commissioner of Customs (Airport & Admin) will be null and void and this will seriously jeopardize the working of the Department.

VII. For that in both the GST and Customs Commissionerates (as in other Central Govt. Offices), a person when conducting investigation acts as an Investigation Officer. But, when the same person sits on a position to adjudicate cases, he acts as an Adjudicating officer. There is a clear cut demarcation of responsibilities in the Commissionerates. Casting aspersions on the intentions of a responsible officer when he is acting as an Adjudicating Officer will only lead to improper functioning of the Commissionerates. Responsibilities and power have been vested on the ‘seat’ and not a ‘person’. It was the very intention of Government of India for speedy and proper functioning of departments.

VIII. For that in the present case the Commissioner of Customs (Airport & ACC) who has issued the impugned order of suspension, also issued the offence report against the Customs Broker/respondent while holding the post of Commissioner, Special Investigation & Intelligence Branch (Port). The authority concerned who is holding two charges of two Commissionerates cannot be

precluded to pass appropriate order by virtue of his official designation/position. Thus, unless the order passed by the learned Single Judge is set aside, the function of the concerned officer of two different Commissionerates will be futile.

IX. For that the learned Single Judge failed to appreciate that Officers of Customs are empowered on behalf of the Customs Act, 1962 and the Regulations made thereunder are by virtue of the Post and/or Authority which he holds and not as a person and it is well settled practice that in case of exigency, an officer holds additional/dual charge, therefore, the order dated 22.11.2022 passed by the Commissioner of Customs (Airport & ACC) is legally sustainable.”

3. Since the above grounds were not adjudicated in the writ proceeding, in this appeal we cannot examine those issues. As observed earlier, the learned writ Court has not laid down legal principles and in the light of the grounds raised by the Department, we are of the considered view to leave the legal issues open while affirming the penultimate direction issued by the learned Single Bench directing the some other authority to conduct the enquiry pursuant to the post-decisional notice issued to the respondent.

4. With the above observations, the appeal stands **dismissed** and consequently the connected application also stands **dismissed**. Time for compliance of the directions issued by the learned Single Bench is extended by a period of 30 days from the date of receipt of the certified copy of this order.

5. The above direction extending time limit will not in any manner prejudice the respondent/writ petitioner, as they have already preferred a separate writ petition stating that the order of suspension of the

customs broker license beyond the time limit prescribed under the regulation is invalid and therefore the license should be restored. The respondent/writ petitioner is at liberty to urge all grounds in the writ petition filed by them as stated above.

6. Since we have left the questions of law open, the order passed in the writ petition shall not be treated as a precedent.

7. There will be no order as to costs.

8. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)