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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 6th February, 2025

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W.P.(C) 161/2025 & CM APPL. 728/2025

SANDEEP SANDHA

.....Petitioner

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE JOINT COMMISSIONER OF
CUSTOMS (EXPORTS)

.....Respondent

Through: Mr. Harpreet Singh, Senior Standing
Counsel for the Respondents along
with Ms. Suhani Mathur and Mr.
Shivang Chawla

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition is filed by the Petitioner-Sandeep Sandha under Article 226 of the Constitution of India seeking to set aside the *Order in Original No. 92/2024/Prateek Bhatia/JC/Export/ICD/TKD* dated 06th December, 2024.
3. The Petitioner submits that, a show cause notice (hereinafter, 'SCN') was issued on 22nd October, 2019 in respect of exports made through ICD Tughlakabad, New Delhi as part of a common investigation. However, the Petitioner submits that he had not received the same. He further submits that he became aware of the SCN only upon receiving the personal hearing notice dated 16th October, 2023. The Petitioner submits that he, thereafter, made multiple requests to the Respondent-Department for providing the copies of



the SCN and relied upon documents (hereinafter, 'RUDs') which were not heeded to.

4. It is the case of the Petitioner that the Respondent-Department had provided the said SCN and RUDs to the Petitioner only on the personal hearing conducted on 25th September, 2024.

5. The grievance of the Petitioner is that though the SCN is of 2019, a proper personal hearing was conducted only on 25th September, 2024.

6. Further it is submitted on behalf of the Petitioner that he was not provided sufficient time to file a reply on the said personal hearing dated 25th September, 2024.

7. A letter was filed by the Petitioner on 10th October, 2024 and again on 30th November, 2024 seeking permission to cross examine the persons who had given statements against the Petitioner, and the impugned order in original has been passed without considering the same.

8. Relying on the above said submissions, Mr. Prem Ranjan, the Id. Counsel for the Petitioner submits that the impugned order is defective as -

- (i) there is substantial delay in adjudication;
- (ii) the SCN and the RUDs were not provided at the first instance;
- (iii) no proper opportunity was given for filing of a reply; and
- (iv) no permission was also granted to conduct cross examination.

9. Mr. Harpreet Singh, Id. Senior Standing Counsel for the Respondent on the other hand submits that adequate opportunity was given, however, the Petitioner did not avail of the same.

10. Heard. The record of proceedings dated 25th September, 2024 shows that the Petitioner was given an opportunity to file detailed submissions within five weeks. The said order is extracted below:



382



**OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)
INLAND CONTAINER DEPOT, TUGHLAKABAD, NEW DELHI-110020.**

RECORD OF PERSONAL HEARING

Noticee :- Sh. Sandeep Sandha

File No.: VIII/ICD/TKD/6/Adj/Exp/Addl. Commr/26/2019

Date of PH: 25.09.2024

Time of PH: 13:30 Hrs.

Noticee Represented by: Sh. Richik Harikant, Advocate.

As requested, the RUDs & SCN have been provided. Sh. Richik have submitted that they will file detailed submissions within 5 weeks.

Regarding proof of delivery of SCN, concerned section is being asked to confirm.

Sh. Richik has agreed to also mention in their submission, if they need any further hearing.

Richik

Jats
25/9

Joint Commissioner of Customs
ICD, (Export), Tughlakabad, New Delhi

The Petitioner, however, chose not to file the written submissions or reply. Merely two letters were filed seeking permission to cross examine the witnesses.

11. The impugned order is an appealable order under Section 129 of the Customs Act, 1962 (hereinafter, 'the Act') but the writ petition has been preferred by-passing the appellate remedy raising grounds as set out above.

12. The grounds which have been raised in the present writ petition can



always be raised before the Appellate Authority as per the Act.

13. Ld. Counsel for the Petitioner submits that the same would be a futile exercise because if the Petitioner succeeds, the matter would have to be again remanded back by the Appellate Authority.

14. As the said argument is conditional upon the Petitioner succeeding in the appeal, the Petitioner ought to avail of his remedies in accordance with law before the Appellate Authority.

15. Under such circumstances, the Court is of the opinion that this is not an extraordinary case for exercise of writ jurisdiction by this Court. It is, however, clarified that none of the questions of law raised have been gone into by the Court. All contentions are left open.

16. Accordingly, the petition is dismissed with the liberty to the Petitioner to approach the appropriate appellate forum to avail his remedies in accordance with law. The Petitioner is free to raise all grounds to assail the impugned order. All pending application(s), if any, are also disposed of.

17. Since the matter was pending before this Court, the Petitioner is granted further 30 days to approach the appellate forum.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 6, 2025

Gs/Am