

IN THE HIGH COURT OF KARNATAKA
AT BENGALURU

Writ Petition Nos.24260-24261/2018 (T-Cus)

1) SHRI RAFEEK NASSAR
S/o RASUL KHAN, AGED ABOUT 44 YEARS
NO 1/23 (OLD), 2 (NEW), BANGARU NAICKEN STREET
TRIPLICANE, CHENNAI - 600002

2) SHRI SHEIK USMAN
S/o Mr MOHAMMED ALI JINNAN
AGED ABOUT 42 YEARS
NO.250/88, BHARTHI LANE
TRIPLICANE, CHENNAI - 600005

Vs

JOINT COMMISSIONER OF CUSTOMS
KEMPE GOWDA INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU - 560300

S Sujatha, J

Dated: July 11, 2019

Appellant Rep by: Sri Gautham Shreedhar Bharadwaj, Adv.
Respondent Rep by: Sri K M Shivayogiswamy, Adv.

Cus - The petitioners have challenged the order passed by revenue mainly on the ground that no opportunity of personal hearing was provided as per Section 122-A of Customs Act, 1962 - The petitioners are held liable to pay penalty under Sections 112, 114AA of Customs Act, 1962 for their acts of omissions and commissions regarding aiding and abetting the smuggling of goods namely 8 Gold bars of 1 Kg each and 4 Gold biscuits of 100 grams each in terms of the order impugned herein - It is discernible that no acknowledgment has been placed on record in support of the claim that the request of petitioners for providing an opportunity of hearing was received by revenue - The receipt of SCN is not disputed by petitioners - Except seeking for personal hearing, no further objections have been filed by the petitioners - It is ex-facie apparent that the petitioners have failed to avail the opportunity provided by revenue to contest the matter - As such, no writ petition is maintainable without exhausting the alternative statutory remedy available under the Act - Accordingly, the writ petitions stand disposed of: HC

Writ petition disposed of

JUDGEMENT

Per: S Sujatha:

The petitioners have challenged the order passed by the respondent dated 21.03.2017 mainly on the ground that no opportunity of personal hearing was provided as per Section 122-A of Customs Act, 1962 by the respondent while passing the order dated 21/23.03.2017 impugned herein.

2. The petitioners are held liable to pay penalty under Sections 112, 114AA of the Customs Act, 1962 ('Act' for short) for their acts of omissions and commissions regarding aiding and abetting the smuggling of goods namely 8 Gold bars of 1 Kg each and 4 Gold biscuits of 100 grams each in terms of the order impugned herein.

3. Learned counsel Sri. Gautam Shreedhar Bharadwaj appearing for the petitioners would point out that a request was made by the petitioners on 08.02.2017 seeking for a personal hearing in the matter on the date of hearing fixed on 09.02.2017 at 1.15 hours, pursuant to the receipt of the show-cause notice issued by the adjudicating authority. It is the grievance of the petitioners that no opportunity of hearing, as sought for, was provided by the respondent – Authority in passing the order of penalty on these petitioners.

4. Learned counsel Sri. K.M. Shivayogiswamy appearing for the Revenue disputes the receipt of any letter dated 08.02.2017 by the authorities, said to have been sent by speed post by the petitioners. It is submitted that even if such request was made, the order impugned was passed on 21/23.03.2017. In the meantime, the petitioners have not approached the authorities. The petitioners cannot circumvent the statutory remedy of appeal available in the guise of violation of principles of natural justice. Accordingly, seeks for the dismissal of the writ petitions.

5. Having heard the learned counsel appearing for the parties and perusing the material on record, it is discernible that no acknowledgment has been placed on record in support of the claim that the request of the petitioners for providing an opportunity of hearing was received by the respondent. The receipt of show-cause notice is not disputed by the petitioners. Except seeking for personal hearing, no further objections have been filed by the petitioners. It is ex-facie apparent that the petitioners have failed to avail the opportunity provided by the respondent to contest the matter. As such, this Court is of the considered view that no writ petition is maintainable without exhausting the alternative statutory remedy available under the Act.

6. Accordingly, the writ petitions stand disposed of, with liberty to the petitioners to avail the statutory remedy available under the Act. If any such appropriate proceedings are initiated by the petitioners, the same shall be considered by the authorities concerned, on merits in accordance with law, without objecting to the period of limitation.