

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 11456 Of 2018

**SHRI RISHABH SANGHVI**

**Vs**

**UNION OF INDIA AND ANR**

M S Sanklecha & M S Sonak, JJ

Dated: July 10, 2019

Appellant Rep by: Dr Sujay Kantawala a/w. Brijesh Pathak, Ms Poorva Patil and Mr Sujit Sahoo

Respondent Rep by: Mr Pradeep S Jetly

Cus - The grievance of petitioner is that the impugned communication rejecting the petitioner's request for cross examination of persons on whose statements the Revenue is relying upon is a clear breach of principles of natural justice - The statements of persons relied upon by Revenue are not being made available for cross examination only on account of alleged delay in making application - There is no time limit provided in the Act for completion of adjudication proceedings as its object is as to ensure that justice is done to the parties - In fact, the Supreme Court in *Andaman Timber Industries 2015-TIOL-255-SC-CX* and this Court in *Kalpna Industries Ltd. 2018-TIOL-397-HC-MUM-CUS* had held that in the absence of an opportunity to being given to the petitioner to cross examine the person on whose statement the Revenue is relying upon would render the order bad - In a matter of this nature relegating the petitioner to adopt the alternate remedy of filing an appeal to the Appellate Authorities would lead to the Officers of Revenue passing orders which are in breach of principles of natural justice - The part of the order dated 11th September 2018 is set aside which rejects the request for cross examination of persons on whose statements the Revenue is relying upon and direct the Commissioner of Customs to permit the cross examination of the three persons whose statements are being relied upon by the Revenue: HC

Writ petition allowed

Case law cited:

*Andaman Timber Industries vs. Commissioner of C.Ex., Kolkata II - 2015-TIOL-255-SC-CX... Para 3*

*Kalpna Industries Ltd. vs. The Union of India and anr. - 2018-TIOL-397-HC-MUM-CUS... Para 3*

JUDGEMENT

1] This petition under Article 226 of the Constitution of India challenges the communication/decision dated 11th September 2018 passed by the

Commissioner of Customs (respondent No.2) under the Customs Act, 1962 (said Act). The impugned decision dated 11th September 2018 was taken by the respondent No.2 in the process of adjudicating a Show Cause Notice dated 27th April 2010.

2] The impugned communication dated 11th September 2018 rejects the petitioner's request for cross examination of the persons, on whose statements the Revenue relies upon in support of the Show Cause Notice dated 27th April 2010. The impugned decision dated 11th September 2018 while rejecting the request for cross examination of the persons on whose statements reliance is placed, held as under:

*"As regards the request for cross examination of Sh. Lalit Mange, Sh. Mohan Nakhua & Sh. Umesh J. Ghelani, I deny the same on ground that the same have been made belatedly and without providing sufficient ground for the same."*

3] The grievance of the petitioner is that the impugned communication rejecting the petitioner's request for cross examination of persons on whose statements the Revenue is relying upon is a clear breach of principles of natural justice. In support, reliance is placed upon the decision of the Supreme Court in *Andaman Timber Industries vs. Commissioner of C.Ex., Kolkata II – 324 ELT 641 = 2015-TIOL-255-SC-CX* and decision of this Court in *Kalpna Industries Ltd. vs. The Union of India and anr. -2018-TIOL-397-HC-MUM-CUS* to submit that there is a flaw in the decision making process and therefore, the writ court should exercise its extraordinary jurisdiction and direct the respondent – Revenue to give cross examination of the persons on whose statements the Revenue proposes to rely in the adjudicating process.

4] On the other hand, Mr. Jetly, learned counsel appearing for the respondent – Revenue, submits that this Court should not exercise its discretion extraordinary writ jurisdiction. This on the ground that there is an alternate remedy available to the petitioner of filing an appeal against the decision/order dated 11th September 2018.

5] Normally, we would not exercise our writ jurisdiction where an efficacious alternative remedy is available. This on the basis of self imposed rule and not on account of any bar for exercising powers of judicial review in respect of any orders passed by quasi judicial authorities within the State of Maharashtra when challenged before us. In a case, where there is a flaw in the decision making process as in this case, such as breach of principles of natural justice, then we would certainly exercise our writ jurisdiction and not relegate the petitioner to the remedy of statutory appeal.

6] In this case, the statements of persons relied upon by the Revenue are not being made available for cross examination only on account of alleged delay in making application. We are unable to understand how an application seeking cross examination of the persons being relied upon could be rejected on account of delay in making the application when the

**impugned order dated 11th September 2018 itself records that the documents relied upon in the Show Cause Notice were supplied/given to the petitioner on that day itself. Further, there is no time limit provided in the Act for completion of adjudication proceedings as its object is as to ensure that justice is done to the parties. In fact, the Supreme Court in Andaman Timber Industries (supra) and this Court in Kalpana Industries Ltd. (supra) had held that in the absence of an opportunity to being given to the petitioner to cross examine the person on whose statement the Revenue is relying upon would render the order bad.**

**7] In a matter of this nature relegating the petitioner to adopt the alternate remedy of filing an appeal to the Appellate Authorities would lead to the Officers of the Revenue passing orders which are in breach of principles of natural justice. This in effect handicaps the party from establishing its innocence. Further such an order which does not give a fair opportunity to the party, is in effect an incomplete order. Moreover, a party would have to suffer such an order till the Appellate Authority sets aside the order for giving an opportunity to cross examine the person on whose statement the Revenue is relying. This would only further delay the process.**

**8] In the above view, we set aside that part of the order dated 11th September 2018, which rejects the request for cross examination of the persons on whose statements the Revenue is relying upon and direct the Commissioner of Customs to permit the cross examination of the three persons whose statements are being relied upon by the Revenue, i.e., Shri. Lalit Mange, Shri. Mohan Nakhua and Mr. Umesh Ghelani.**

**9] Petition is allowed in the aforesaid terms.**