

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

WPO/275/2025

RAVI CHANDRA MISHRA  
AND  
UNION OF INDIA AND ANR.

BEFORE :  
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY  
Date : 22<sup>nd</sup> May, 2025

Appearance:

*Mr. Farook M. Razack, Sr. Adv.*

*Mr. Sayak Konar, Adv.*

*...for the petitioner*

*Mr. Kaushik Dey, Adv.*

*Mr. Tapan Bhanja, Adv.*

*...for the Customs Authority*

*Mr. Smarajit Roy Chowdhury, Adv.*

*...for the UOI*

The Court :- 1. Challenging the adjudication order dated 26<sup>th</sup> December, 2024 issued by the Principal Commissioner of Customs (Port), the respondent no.2 herein, the instant writ petition has been filed.

2. It is a petitioner's case that the petitioner was served with a show cause notice dated 13<sup>th</sup> May, 2025 under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as the "said Act") read with Section 124 of the said Act. It is the further case of the petitioner that notwithstanding the show cause notice being served, the relevant relied upon documents (RUD) which were served to the petitioner in the form of an attachment to an email communication could not be downloaded or accessed by the petitioner. In the circumstances, the petitioner had by a notice in writing dated 14<sup>th</sup> June, 2024 requested the adjudicating authority to favour the petitioner with the relevant RUD. Such communication was not responded to. Ultimately, in course of hearing when the aforesaid fact was pointed out, the adjudicating authority had acknowledged the same and had forwarded the RUD to the petitioner by an email communication dated 8<sup>th</sup> November, 2024 which forms part of the writ petition.

3. Records would reveal that the petitioner had acknowledged receipt of such documents as would corroborate from the email communication dated 11<sup>th</sup> November, 2024 appearing at page 154 of the writ petition. According to the petitioner, the petitioner had duly responded to the show cause upon receipt of the RUD by cover of letter dated 9<sup>th</sup> December, 2024 with a request to permit the petitioner an opportunity of personal hearing. The adjudicating authority without adhering to such request or considering the petitioner's response to the show cause had decided the same by the order impugned.

4. Mr. Razack, learned senior Advocate representing the petitioner by drawing attention of this Court to paragraph 37 of the impugned order would submit that though the petitioner had responded to the show cause, the adjudicating authority without considering such response and by treating the petitioner as having not filed any response, had decided the aforesaid show cause and passed the order impugned. According to him, denial of opportunity of personal hearing constitutes violation of principle of natural justice. Non-consideration of the response filed by the petitioner also vitiates the order. He would submit that the aforesaid order in so far as the petitioner is concerned, cannot be sustained and pending disposal of the petition be stayed.

5. Mr. Dey, learned Advocate appears on behalf of the respondent-Customs Authority. He would submit that from the order impugned, it would transpire that the petitioner had not responded to the show cause. He, however, prays for an accommodation to take appropriate instruction in the matter especially as to whether the petitioner was afforded with opportunity of hearing.

6. Having heard the learned Advocates appearing for the respective parties and noting that in the instant case though the show cause notice was issued on 13<sup>th</sup> May, 2024, the petitioner was not favoured with the relevant documents. It is only during the course of hearing, at the instance of the petitioner the adjudicating authority

acknowledged the lapse and had favoured the petitioner with the relevant RUD. Though there appears to be some dispute at this stage as to whether the petitioner had responded to the show cause having regard to the submissions made by Mr. Dey, however, since from the order impugned it does not appear that the petitioner was offered any further opportunity of personal hearing to explain the relied upon documents which constitutes violation of principles of natural justice, I am of the view that the petitioner has been able to make out a prima facie case for the petition to be heard.

7. Let affidavit-in-opposition to the instant petition be filed within a period of two weeks after the summer vacation; reply thereto, if any, be filed two weeks thereafter. Let the writ petition be listed under the heading 'For Hearing' in the monthly list of August, 2025.

8. Considering the prima facie case, there shall be an interim order restraining the respondents from giving effect or further effect to the order dated 26<sup>th</sup> December, 2024 issued by the respondent no.2 confined to the petitioner, till the end of August, 2025 or until further order whichever is earlier.

9. The point of maintainability of the writ petition as raised by Mr. Dey limited to the question of delay on the ground that the writ petition has been filed beyond the ordinary statutory period, is kept open to be decided at the time of final hearing.

(RAJA BASU CHOWDHURY, J.)

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