

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

WPO/280/2025

SUSAMA DAS  
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. Joydeb Ghorai, Adv.*

*Mr. S. Farook, Adv.*

*Mr. Suman Chatterjee, Adv.*

*Mr. Diptesh Ghorai, Adv.*

*...for the petitioner*

*Mr. Smarajit Roy Chowdhury, Adv.*

*...for the UOI*

The Court :- 1. Since this matter is related to WPO/275/2025 and since Mr. Kaushik Dey, learned Advocate and Mr. Tapan Bhanja, learned Advocate had represented the respondent Customs Authority in such matter, and since despite service the Customs Authority is not represented, both Mr. Dey and Mr. Bhanja are directed to appear in this matter, let their appointment be regularized.

2. 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.

3. 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 further the petitioner's case that notwithstanding the show cause notice being served, the relevant relied upon documents (RUD) 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.

4. It is the case of the petitioner that in course of hearing on 8<sup>th</sup> November, 2024 when it was pointed out that the petitioner was not supplied with the relevant RUD, the adjudicating authority by email communication had made available the same to the petitioner. Following the aforesaid, the petitioner had responded to the show cause by communication in writing dated 9<sup>th</sup> December, 2024 and had also requested for a 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.

5. Mr. Razack, learned senior Advocate representing the petitioner would submit that after the aforesaid response was filed by the petitioner, the adjudicating authority did not offer any opportunity of hearing to the petitioner to explain the RUD despite request being made by the petitioner. According to him, the aforesaid order stands vitiated on such ground, should be set aside.

6. 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 adjudicating authority had duly considered the response filed by the petitioner. He, however, prays for an accommodation to take appropriate instruction in the matter.

7. Having heard 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 RUD. 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. From the order impugned it does not appear that the petitioner was offered any further opportunity of personal

hearing to explain the RUD notwithstanding the petitioner seeking an opportunity of personal hearing. The aforesaid constitutes violation of principles of natural justice.

8. I am of the view that the petitioner has been able to make out a prima facie case for the petition to be heard. 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.

9. 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.

10. The point of maintainability of the writ petition as raised by Mr. Dey having regard to the writ petition being filed beyond the ordinary statutory period is kept open to be decided at the time of final hearing.

(RAJA BASU CHOWDHURY, J.)

akg/