

**IN THE HIGH COURT OF MEGHALAYA AT  
SHILLONG**

**: ORDER :**

**WP (C) No.315 of 2016**

Shri Kajal Roy

..... Petitioner

-Versus-

The Additional Commissioner of Customs (Preventive),  
Shillong and another

..... Respondents

**Date of Order:**

::

**24.10.2016**

**PRESENT**

**HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE**  
**HON'BLE SHRI JUSTICE VED PRAKASH VAISH**

Shri N Dasgupta, for the petitioner  
Shri N Mozika, for the respondents

**BY THE COURT: (per Hon'ble the Chief Justice) (Oral)**

With the consent and at the request of the learned counsel for the parties, we have considered this matter finally at this stage itself where, having regard to the circumstances, it does not appear necessity to call for any counter affidavit from the respondents because the matter essentially revolves around the material already available on record.

By way of this writ petition, the petitioner, said to be a dealer of betel nuts, has stated grievance that despite the order dated 05.11.2015 of this Court in WP(C) No.329 of 2014, the concerned authority has not considered the preliminary issues and the matter is

sought to be taken up for final hearing without the decision of preliminary issues by the competent authority.

The petitioner has further pointed out that the Assistant Commissioner of Customs has purportedly sent a response to the letter of his counsel on 10.05.2016 (Annexure-6) and therein, the decision of preliminary issues raised is sought to be indicated but in the last, the said Assistant Commissioner has stated that the speaking order as directed by the Hon'ble Court will be issued by the competent authority.

It is contended that the said Assistant Commissioner is not the competent authority to take a decision in the matter and in fact, the competent authority is the Additional Commissioner; and that being the position, the communication of the Assistant Commissioner cannot be said to be that of a considered decision as required by the order of this Court.

Per contra, it is sought to be contended by the learned counsel appearing for the respondents Mr. N Mozika that in the hierarchy of authorities in the department, the Assistant Commissioner cannot be said to be incompetent to deal with the preliminary issues.

It appears that in this matter, after seizure of about 16 MT of dry betel nuts as back as on 14.07.2014, the petitioner approached this Court in WP(C) No.329 of 2014, which was disposed of on 05.11.2015 with the following order:-

"05.11.2015

*Mr. VK Jindal, learned senior counsel assisted by Mr. S Dey, learned counsel appears for the petitioner.*

*Mr. R Deb Nath, learned counsel represents for the respondents.*

*We have heard learned counsel for parties and perused the writ petition.*

*Learned senior counsel Mr. VK Jindal states that it would be more appropriate for the parties to go to Custom authorities for adjudication on preliminary issues raised in the writ petition. However, the authorities may be directed to pass a speaking order and incase the petitioner still remained aggrieved, he may be granted liberty to come to this Court again. Till then, the matter may not be allowed to proceed on merit.*

*Mr. R Deb Nath learned counsel does not have any objection to the submission of Mr. VK Jindal, learned Sr. counsel as the same does not seem to be unreasonable. In that view of the matter we dispose of this writ petition with liberty to the petitioner to raise all the preliminary issues as raised here in this writ petition which shall be considered first by the Custom authorities before deciding on merit. However, in case of survival of any further grievance the petitioner may again come to this Court. Till then, there shall be no decision on merit by the customs authority.*

*Writ petition thus stands disposed of."*

Per the force of the order aforesaid, it was enjoined upon the concerned authority to consider and decide the preliminary issues sought to be raised by the petitioner. Though it appears that in the letter dated 10.05.2016, the Assistant Commissioner of Customs purportedly dealt with the issues sought to be raised by the petitioner but curiously enough, in the last, the learned Assistant Commissioner observed as under:-

*"Further, the adjudication/speaking order as directed by the Hon'ble Court will be issued by the competent authority in due course."*

The aforesaid conclusion of the letter dated 10.05.2016, effectively nullifies the decision, if at all taken by the Assistant Commissioner. Moreover, when it had been an admitted position that the adjudication was to be carried out by some other authority who would be competent to deal with the matter, we find it rather unjustified

that the preliminary issues were sought to be dealt with by the Assistant Commissioner at all.

In the letter and spirit of the order dated 05.11.2015, it is ex facie evident that the preliminary issues sought to be raised by the petitioner are required to be considered at the first by the competent authority before deciding the matter on merits. In such an adjudicatory process, the decision on preliminary issues has to precede the decision on merits and obviously, all such decisions have to be taken by the competent authority and none else. It is entirely unacceptable a suggestion that the preliminary issues may be decided by some other authority lower in hierarchy and the matter on merits may be decided by the higher authority. Such bifurcation of the decision making process is neither envisaged by law nor contemplated by the order dated 05.11.2015.

The letter dated 10.05.2016 (Annexure-6), in the given set of circumstances, could only be construed as being that of an opinion of the Assistant Commissioner and not the considered decision on the preliminary issues as required by the order dated 05.11.2015, which has to be taken by the competent authority, who would ultimately deal with the matter on merits, if occasion so arise, i.e., the Additional Commissioner in the office of Commissioner Customs (Preventive), Shillong.

When we have enquired if any date has been fixed by the competent authority for further proceeding in the matter, learned

counsel Mr. N Mozika, after taking instructions, submits that no further date after 15.09.2016 has been fixed.

In the circumstances of the case, this writ petition is disposed of at this stage itself with the observations foregoing and with directions that the petitioner shall appear before the concerned Additional Commissioner on 09.11.2016. On his appearance, the learned Additional Commissioner shall hear the petitioner or his authorized representative on the preliminary issues at the first and take a decision thereupon before entering into the merits of the case.

No costs.

**JUDGE**

**CHIEF JUSTICE**

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Item No.1