

ORDER SHEET

APO/46/2020
IA NO:GA/1/2019 (Old No.GA/1586/2019),
GA/2/2019 (Old No.GA/1587/2019)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

THE COMMISSIONER OF CUSTOMS (PORT) WB KOLKATA
Versus
ANKIT KAPOOR PROPRIETOR OF
M/S. GLOBAL FOODS INTERNATIONAL AND ANR

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 9th December, 2020.

(Via Video Conference)

Appearance:
Mr. S. Ganguly, Adv.
Ms. S. Gupta, Adv.

The Court: An affidavit of service is on record.

None appears for the respondents.

We have perused the impugned judgement and order dated 7th June, 2018.

We find no infirmity in it.

Ms. Gupta, learned advocate for the appellant, submits that witnesses who had deposed under section 108 of the Customs Act, 1962 could not and cannot be found for cross examination.

The records should suggest so. The appellant authority may proceed with adjudication as directed by the order dated 7th June, 2018 by giving an opportunity, which must be clearly evident in the records, to the respondents to cross-examine the witnesses. The record should show that summons were duly issued and served on the witnesses to appear before the adjudicating authority on a particular date and time to offer them for cross-examination by the respondents. It should also be recorded by the adjudicating authority whether the summons were served or could not be served; whether the witnesses or any of them were present or not present; and also whether all or any of the witnesses were examined. If Ms. Gupta's

submission that the witnesses cannot be located is found true, the same should also be recorded and communicated to the respondents. In that case, the adjudicating authority could proceed further without cross-examination of the witnesses by the respondents. However, in such a case it would be open to the respondents to make an argument about the weight of the evidence of a witness who has not been tested on cross-examination.

The application, GA 1586 of 2019, is already disposed of.

The appeal, APO 46 of 2020, along with the application, GA 1587 of 2019, is disposed of with the above observations.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

CS.