

ORDER SHEET

WPO/419/2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHEKHAR AGARWAL
VERSUS
JOINT COMMISSIONER OF CUSTOMS (PORT) AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 1st September, 2021.

(Via Video Conference)

Appearance:
Mr. Saurabh Bagaria, Adv.
Mr. Saroj Tulsian, Adv.
Mr. Rites Goel, Adv.
. . .for the petitioners.

Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
. . .for the respondents.

The Court: In this matter the petitioner has challenged the impugned notice and final adjudication order on the ground of inherent lack of jurisdiction of the Officer of the DRI who acted as a Custom Officer at the time of issuance of notice under Section 124 of the Customs Act, 1962, which according to the petitioner, is contrary to law laid down by the Hon'ble Supreme Court in the case of *Canon India Pvt. Ltd.* reported in 2021 (376) E.L.T. 3 (S.C.) as well as the order of this Court dated 12th April, 2021 in the case of *Manas Kumar Paul -vs- The*

Principal Commissioner of Customs (WPO 183 of 2021) and order dated 7th April, 2021 in the case of *Emami Agrotech Ltd. -vs- Union of India & Ors. (WPA 7130 of 2021)* and other group of matters and decision of the Delhi High Court dated 12th April, 2021 in the case of *Gopal Gupta -vs- Principal Additional Director General [WP (CRL) 821/2021]*. It is the case of the petitioner that all these cases were not properly considered at the time of passing the impugned order of adjudication.

Since it is a pure question of law and matter of interpretation of various judgments of the Hon'ble Supreme Court and other High Courts the writ petition cannot be dismissed summarily.

Mr. Dey learned advocate appearing for the respondent DRI authority was asked to take instruction from the department as to whether the impugned order can be set aside and remanded to the adjudicating Officer concerned to consider afresh by taking into the aforesaid judgments relied on by Mr. Bagaria learned advocate for the petitioner or this Court should hear this matter on affidavits after granting interim order. Mr. Dey, on instruction submits, that the department is agreeable for remand of the case since the matter involves the issue of jurisdiction of the authority who has initiated the impugned proceeding, issued the notice and pass the final adjudication order. Petitioner on the interpretation of the aforesaid judgment contends that the officer concerned of the DRI has got no jurisdiction. Though Mr. Dey denies the allegation of Mr. Bagaria about the issue of jurisdiction.

Considering these facts, the impugned order dated 30th June, 2021 being Annexure P6 to the writ petition is set aside and the matter is remanded to the respondent adjudicating authority concerned who will consider the matter afresh.

The respondent will adjudicate on the jurisdictional issue first after taking into the consideration of all the aforesaid judgments which have been relied upon by the petitioner as referred herein above before passing the final order on merit.

Since this matter has not been heard on affidavits and on merit and is being remanded only on the jurisdictional issue without calling for affidavits, the allegations contained in the writ petition is deemed to have been denied by the respondents.

Such adjudication is to be concluded and final order is to be passed by a reasoned and speaking order after giving an opportunity to hear the petitioner or authorized representatives within eight weeks from the date of communication of this order.

WP No. 419 of 2021 is disposed of.

(MD. NIZAMUDDIN, J.)

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