

OD-3

WPO/943/2021  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

RAJESH MEHTA  
VS  
UNION OF INDIA AND ORS

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 23<sup>rd</sup> November, 2021.

*Appearance:*  
*Mr. R.K. Chowdhury, Adv.*  
*Mr. B.N. Pal, Adv.*  
*Mr. T.K. Mittra, Adv.*

*Mr. Bhaskar Prasad Banerjee, Adv.*  
*Mr Tapan Bhanja, Adv.*

The Court : Heard both the parties. In this matter, petitioner has challenged the impugned order dated February 25, 2020 passed by Customs, Excise and Service Tax Appellate Tribunal on the ground that the same is in violation of the principles of natural justice, since the learned Tribunal while dismissing the appeal in question, has relied on a circular being no. 45/2001-customs dated August 7, 2001 which has already been withdrawn from financial year 2002-03 being annexure P-2 appearing at page 53 of the writ petition and the learned Tribunal has not considered the judgment of another Co-ordinate Bench on the similar issue in favour of the petitioner.

Mr. Banerjee, learned Advocate appearing for the respondents submits that so far as the allegation of non-consideration of another judgment of the Co-

ordinate Bench of the Tribunal is concerned that has been considered in paragraph 7 of the impugned order passed by the learned Tribunal. But so far as the issue of reliance of the Tribunal on the circular dated August 7, 2001 which has already been withdrawn is concerned, Mr. Banerjee is not in a position to contradict the same.

Considering the submission of the parties, I am of the view that keeping this writ petition pending will be futile exercise and interest of Justice will be served if the impugned order of the Tribunal dated February 25, 2020 is set aside only on this limited issue of the aforesaid circular dated August 7, 2001 which has been withdrawn. Accordingly, the aforesaid the impugned order dated 25<sup>th</sup> February, 2020, is set aside with the direction upon the learned Tribunal to consider afresh on the issue of application of the aforesaid circular dated August 7, 2001 in the case of the petitioner and learned Tribunal shall also consider the judgments upon which the petitioner wants to rely in the matter at the time of hearing on remand.

This writ petition being WPO 943 of 2021 is accordingly disposed of by setting aside the impugned order on the aforesaid limited ground and the rest part of the order of this Court, I am not inclined to interfere.

This writ petition has been disposed of at the motion stage. Allegations contained in the writ petition are deemed to have been denied by the respondents.

(MD. NIZAMUDDIN, J.)