

**Form No. J(2).
Item No.8**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 02.12.2022

DELIVERED ON: 02.12.2022

**CORAM:
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T 334 of 2020
+
I.A. No.CAN 1 of 2020 (Old No.CAN 2290 of 2020)
I.A. No. CAN 2 of 2020 (Old No. CAN 2301 of 2020)**

**The Commissioner of Customs (Port)
Vs.
M/s. Zeniak Innovation India Ltd. & Ors.**

**Appearance:-
Mr. K.K. Maity
Mr. Tapan Bhanja**

.....for the appellant

Mr. Kaushik Dey

.....for the respondent no.5

**Mr. Shovendu Banerjee
Mr. Soumyajit Mishra**

..... For the respondent

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal is directed against the order dated 5th November, 2019 in WP 17073 (W) of 2019. The learned writ Court has set aside the order in original dated 14th June, 2019 and directed the appellant to afford an opportunity of cross-examination of the persons from whom statement has been recorded and considered by the authority while passing the order.

2. It is a submission of Mr. K.K. Maity, learned counsel for the appellant that the adjudicating authority has not relied upon any statement of any of the persons, which was recorded by the Directorate of Revenue Intelligence in course of investigation.

3. Mr. Banerjee, learned counsel for the respondent nos.1 to 3 has drawn our attention to a few paragraphs of the order in original, namely, paragraphs 48, 49 and 54. From the above paragraphs it is seen that the stand taken by the appellant before us stating that the authority has not relied upon any of the statements appears to be incorrect. Interestingly in paragraph 62 of the order while considering the request made by the respondents for cross-examination of 18 persons, the adjudicating authority states that he has not relied upon any of their statements to arrive at a conclusion. However, this finding recorded by the adjudicating authority is contrary to what he has held in the aforementioned paragraphs, which we

have pointed out in those paragraphs. The statements have been referred to and conclusion has been arrived at by the authority against the respondents. Thus, going by what has been stated by the adjudicating authority in paragraph 62, we are of the view that if the authority does not propose to rely upon any of the statement of those 18 persons, then obviously a fresh order need be passed on the available material excluding the statements of those 18 persons in the light of the specific stand taken by the adjudicating authority that he is not relying upon any of those statements.

4. For the above reasons, the appeal stands allowed in part and the order passed in the writ petition is modified by setting aside the order in original dated 14th June, 2019 and remanding the matter back to the adjudicating authority to pass a fresh order on merits and in accordance with law without placing any reliance on the statements recorded from those 18 persons. This direction be complied with within a period of eight weeks from the date of receipt of the server copy of this judgment and order after affording an opportunity of personal hearing to the authorized representative of the respondents/assessors. Consequently, the connected application (IA No.CAN 2 of 2020 (Old No.CAN 2301 of 2020) also stands **disposed of.**

5. No costs.

6. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J.)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

RAJA/Pallab, AR(Ct.)