08.06.2022.
p.b.
Sl. No.34.

W.P.A. 9265 of 2022

M/s. Vishal Enterprise & Anr.
Vs.
Union of India & Ors.

Mr. Biswajit Mukherjee,
Mr. Soumyajit Mishra.
……..for the petitioners.
Mr. Kaushik Dey,
Mr. Tapan Bhanja.
………for the Customs authority.

Heard learned advocates appearing for the parties.

Petitioner has filed this writ petition challenging the legality and validity of the impugned order dated 26th April, 2022 passed by the Principal Commissioner of Customs (Port), Kolkata, pursuant to and in compliance of earlier order of this Court dated 4th March, 2022 in WPO 452 of 2018, on the ground that the same is bad and in total non-application of mind and not in total compliance of the order of this Court dated 4th March, 2022. It appears from record that the customs Excise and Service Tax Appellate Tribunal (CES) Tax by its order dated 11th May, 2018 had set aside the original order dated 30th January, 2013 and remanded the matter back to the Principal Commissioner of Customs to pass a fresh order and due to non-compliance and delay in implementing the said order, the petitioner had approached this Court by way of a writ petition being WPO No.452 of 2018 and said writ petition was disposed of by directing the Principal Commissioner of Customs concerned to reconsider and pass a fresh order in compliance of the aforesaid order of the Tribunal within two months and also for considering the refund in question. On perusal of the impugned order dated 26th April, 2022, it appears that the Principal Commissioner of Customs has passed the impugned order in total non-application of mind and in an arbitrary manner by citing the reason that since the original order has already been passed by his predecessor he will not take any different view from the predecessor. Had the view been accepted, there would not have been any reason to set aside the order by the Tribunal and remanding back to the Principal Commissioner of Customs. The very purpose of remanding the matter by the Tribunal has been frustrated by such type of order by the Principal Commissioner of Customs and he should have applied his mind and considered the whole issue afresh which he has not done.

Mr. Dey, learned advocate appearing for the respondent customs authority could not convince this Court in justification of passing the aforesaid impugned order and the reasons given by the Principal Commissioner of Customs.

Considering the submission of the parties, the aforesaid impugned order dated 26th April, 2022 is set aside and remanded back to the Principal Commissioner of Customs (Port), Kolkata, to reconsider the matter and in the letter and spirit of the earlier order of this Court dated 4th March, 2022 and pass a fresh and speaking order in accordance with law after giving an opportunity of hearing to the petitioner or their authorized representatives within four weeks from the date of communication of this order.

With this observation, this writ petition being WPA No.9265 of 2022 stands disposed of.

(Md. Nizamuddin, J.)