

ORDER SHEET

WPO/376/2013
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI GAUTAM DALMIA
VS
UNION OF INDIA, THE CHIEF COMMISSIONER OF CUSTOMS & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 16th December, 2022.

Appearance:
Mr. B.N. Pal, Adv.
Mr. T.K. Mitra, Adv.
Mr. Prottyush Chatterjee, Adv.
...For the Petitioner
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
...For the respondent Customs Authority

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned adjudication order dated 26th June, 2012 passed by the respondent Customs Authority on the ground that copy of the same was not served upon the petitioner as per mode of service prescribed under Section 153(a) of the Customs Act, 1960 prevailing at the relevant time under which any order or decision passed by the Authority had to be served by tendering it by registered post or by such courier as may be approved by the Commissioner of Customs. Admittedly in the instant case, petitioner could not show any document before this Court that either the impugned order was actually received by the petitioner or it was sent through registered post or any other mode prescribed under the law prevailing at the relevant time.

Mr. Banerjee, learned advocate appearing for the respondent Customs Authority submits that the impugned order was sent to the petitioner by speed post though he could not establish before this Court from any

document that the same was actually received by the petitioner and further the provision of speed post was not in existence at the relevant time under Section 153 of the Act. Under the post amendment of Section 153 from 29th March, 2018 the provision of speed post has been inserted. Petitioner has also prayed in this writ petition for direction upon the respondent Authority concerned to serve a certified copy of the aforesaid impugned order to enable him to file statutory appeal against the same. Petitioner on the aforesaid proposition of law relies on an unreported judgment of this Court in WPA 4249 of 2022 dated 30th June, 2022 in the case of Haldia Petrochemicals Limited vs. Assistant Commissioner, CGST & CX, Haldia-II Division, Haldia Commissionerate & Ors. Mr. Banerjee is fair enough to bring it to the notice of this Court that the aforesaid judgment of this Court has been upheld by the Division Bench of this Court in a judgment dated 29th November, 2022 in M.A.T. 1356 of 2022.

Considering the facts and circumstances of this case, submission of the parties and factual and legal position as discussed above, this writ petition being WPO 376 of 2013 is disposed of by holding that the aforesaid impugned order which has been disclosed in the affidavit in reply in this writ petition be treated as certified copy of the aforesaid impugned order for the purpose of filing an appeal and if petitioner files appeal on the basis of copy of the aforesaid order within three weeks from date before the Appellate Authority that shall be accepted by it subject to compliance of other formalities.

(MD. NIZAMUDDIN, J.)

