

OD – 10

ORDER SHEET
WPO/427/2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CHEVIOT COMPANY LTD
VS
ASST. COMMISSIONER OF CUSTOMS ,AIR CARGO REFUND SECTION &
OR

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 10TH JUNE, 2022.

Appearance:
Mr. Rahul Dhanuka, Adv.
Mr. H. Chwodhury, Adv.
..for the petitioner

Mr. Somnath Ganguli, Adv.
Mr. Bhaskar Prasad Banerjee, Adv.
..for the respondent No.1-4

Mr. Sourav Mondal, Adv.
..for the Union of India.

The Court : Heard learned Advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned adjudication order dated 18th May, 2018 passed by the Assistant Commissioner of Customs as appears from Annexure P8 at Page 89 of the writ petition.

It is the case of the petitioner that by the aforesaid impugned order dated 18th May, 2018, petitioner's claim of refund has been rejected though it has been specifically recorded as appears from the departmental

communication dated 15th February, 2017 at Page 67 of the writ petition that the Cess paid under Jute Manufacturers Cess Act, 1983 by the said unit in question is exempted and is liable for refund to the SEZ Unit subject to claim submitted within the time limit which according to the petitioner has been submitted within the time limit.

It appears from the impugned order at Paragraph 9 that petitioner is entitled to be exempted from payment of Cess under the Cess Act, 1993 and payment in excess was liable to be refunded to the SEZ Unit subject to claim submitted within the time limit.

Petitioner submits that apart from the fact as above according to the petitioner it was submitted within the time limit and has relied on several judgements and though the same have been referred in the impugned order but have neither been considered nor discussed and as such the impugned order is non-speaking.

Mr. Ganguli, learned Advocate appearing for the respondents submits that the impugned order is elaborate speaking order but could not satisfy this Court from the impugned order that the judgements referred in the aforesaid impugned order were considered and discussed.

Considering the submissions of the parties, this writ petition being WPO No. 427 of 2018 is disposed of by setting aside the impugned order dated 18th May, 2018 and remanding the matter back to the respondent Officer concerned to reconsider and pass a fresh order after giving opportunity of hearing to the petitioner or its authorised representative and

after considering and dealing with the judgements relied upon by the petitioner in support of its contention, within eight weeks from the date of communication of this order.

(MD. NIZAMUDDIN, J.)

Sbghosh