

19.05.2023
Ct. No.1
Item Nos.07
AN/RP

**MAT 810 of 2023
With
IA No.CAN 1 of 2023**

**Akshoy Kumar Ghosh & Sons
Vs.
Joint Commissioner of Customs (Appraising Group-I) &
Anr.**

Mr. Mainak Bose
Mr. Neeraj Kumar Pandey
Mr. Shakeel Md. Akhter
... ... for the appellant

Mr. Uday Sankar Bhattacharya
Mr. Tapan Bhanja
... ...For Customs Authority

1. We have heard the learned advocates for the parties at length.
2. The appellant before this Court challenges the order passed by the learned Single Bench dated 2.5.2023, particularly with regard to the directions given in the last paragraph of the order thereby the appellant has been directed to file reply to the show cause notice, which was impugned in the writ petition and time for filing such reply was extended. However, we find from page 20 of the order

the learned writ Court has recorded the following prima facie findings.

“Considering the facts and circumstances of this case and submission of the parties, I am of the view that though the subject matter of challenge is the impugned show-cause notice but since the question of jurisdiction of the respondent officer concerned and interpretation of several provisions of law are involved and also several decisions of the different High Courts required to be considered, this writ petition cannot be thrown out at the motion stage and the issue involved deserves adjudication upon affidavits to be filed by the respondents and I am also of the view that the petitioner has been able to make out a prima facie case in this matter for an interim order.”

3. On reading of the above paragraph will show that the learned writ Court was prima facie satisfied that the writ petition cannot be thrown out at the motion stage and the issues involved deserves adjudication upon affidavits to be filed by the respondents. Further, the Court was of the view that the appellant has been able to make out a prima facie case in this matter for an interim order.

4. The Court having come to such a conclusion has issued direction to the appellant to submit his reply to the show cause notice. In our view, if such direction is to be implemented then the writ petition itself would become infructuous, more so when the learned writ Court was of the view that the writ petition cannot be thrown out at the motion stage and the issue involved in the writ petition deserves adjudication and the writ petitioner has also been able to make out a prima facie case for an interim order. Furthermore, the learned writ Court had noted that the question of jurisdiction of the respondent officer concerned and the interpretation of several provisions of law are involved and also several decisions of the different High Courts required to be considered. Therefore, we are of the view that adjudication of the show cause notice should remain stayed till further orders are passed by the learned writ Court after affidavits are filed by the respondent. Accordingly, there will be an order restraining the respondent from

proceeding with the adjudication of the show cause notice dated 16th February, 2023 and this order shall confine only to the appellant and not to other co-noticees.

5. With the above observations, the appeal and the connected application stand disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)