

ORDER SHEET
WPO/236/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI PRAKASH GOTI
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 2nd April, 2024.

Appearance:
Mr. Hardik Modh, Adv.
Ms. Srijani Mukherjee, Adv.
Mr. Shaurya Samanta, Adv.
...For the Petitioner

Mr. Vipul Kundalia, Adv.
Mr. Prithu Dudhuria, Adv.
...For the Revenue

The Court : Heard learned advocates appearing for the parties.

Affidavit of service filed by the petitioner be kept with the record.

By this writ petition, petitioner has challenged the impugned adjudication order dated 30th September, 2023 passed by the Additional Commissioner of Customs concerned, on the ground that the initiation of the impugned proceeding and issuance of impugned show cause notice itself is without jurisdiction and petitioner's objection on the issue of jurisdiction was not considered and decided before passing the impugned adjudication order. Petitioner has challenged jurisdiction of the authority concerned in initiating the impugned proceeding by relying on a judgment of the Hon'ble Supreme Court in the case of Canon India Pvt. Ltd. vs. Commissioner reported in 2021 (376) E.L.T. 3 (S.C.)/[2021] 125 taxmann.com 188 (SC). In support of his contention, learned advocate representing the petitioner also relies on a reported decision of this Court dated 1st September, 2021 in the

case of Shekhar Agarwal vs. Joint Commissioner of Customs (Port) reported in (2023) 4 Centax 209 (Cal.).

Considering the facts and circumstances of the case and submission of the parties and following the aforesaid earlier decision of this Court dated 1st September, 2021 which has not been further challenged by the Authority before any higher forum, this writ petition being WPO 236 of 2024 is disposed of by setting aside the impugned adjudication order dated 30th September, 2023 and the matter is remanded back to the respondent adjudicating Authority concerned to reconsider the matter and while reconsidering the matter the adjudicating Authority shall first decide the jurisdictional issue after taking into consideration the judgments petitioner intends to rely.

It is clarified that the impugned order has been set aside on a limited ground of non-consideration of jurisdictional issue by the adjudicating Authority and this Court has not gone into the merit of the impugned adjudication order. Furthermore, since the writ petition has been disposed of at motion stage without calling for affidavits, all other allegations against the respondents shall be deemed to have been denied.

The respondent adjudicating Authority shall consider and adjudicate the matter and pass final order in accordance with law and by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or his authorised representative, within six months from the date of communication of this order.

(MD. NIZAMUDDIN, J.)

