

OD-7

ORDER SHEET

WPO No. 822 of 2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. AKTEL BY PROPRIETORSHIP ANAND KUMAR & ORS.

Vs.

UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 24th September, 2021.

(Via Video Conference)

Appearance :

Mr. Rajeev Kumar Agarwal, Adv.
...for the Petitioners.

Mr. Kaushik Dey, Sr. Adv.
Mr. Abhradip Maity, Adv.
...for the Respondents.

The Court : In this writ petition the writ petitioner is aggrieved by the impugned show-cause notice issued on 13th April, 2020 by the DRI under Section 124 read with Section 28 of the Customs Act, 1962. As per the judgment of the Supreme Court passed in M/s. Canon India Private Limited Versus Commissioner of Customs in Civil Appeal No.1827 of 2018, the DRI has no authority to issue any show-cause notice under Section 28 of the Customs Act, 1962. Paragraphs 18 to 23 of the judgment are relevant in this regard. In pursuance of M/s. Canon India Private Limited (supra) such show-cause notice is *non-est* in law and the person issuing the show-cause notice has no authority under the Customs Act to issue the said show-cause notice.

I have heard learned Counsel appearing for the parties and perused the materials on record.

In my view, there appears to be a prima facie case for staying the show cause notice following the judgment in M/s. Canon India Private Limited (supra). Accordingly, the impugned show-cause notice is stayed till 3rd January, 2022, or until further orders, whichever is earlier.

I have not gone into the merits of the other arguments raised by the learned Counsel appearing for the petitioner at this stage.

Accordingly, let affidavit-in-opposition be filed within four weeks after Puja Vacation; reply, if any, be filed within two weeks thereafter.

Learned Counsel appearing for the respondents submits that respondent no.2 has no role to play and his name should be deleted in this proceeding.

Accordingly, respondent no.2 is deleted from this proceeding.

Let the matter appear in the list on 20th December, 2021.

(MD. NIZAMUDDIN, J.)