**(2016) 07 CAL CK 0061**

**In the Calcutta High Court**

**Case No :** Writ Petition Nos. 473-474, 476-478 and 487 of 2016

SGS Marketing APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 20-07-2016

**Acts Referred:**

**Citation :** (2016) 341 ELT 47

**Hon'ble Judges :** Dipankar Datta, J.

**Bench :** Single Bench

**Advocate :** S/Shri T. Gulati with S. Mathew and A. Majumder, Advocates, for the Petitioner; Shri R.N. Das, Senior Advocate with Ms. A. Rajyashree, Advocate, for the Respondent

**Final Decision :** Disposed Off

## Judgement

Dipankar Datta, J. - Since the issues of law and fact raised in these writ petitions are common, the same have been taken up for consideration together and are being disposed of by this common order.

2. The lead matter is W.P. No. 473 of 2016. In this writ petition, an order dated March 28, 2016, passed by the Deputy Commissioner of Customs, Air Cargo Refund Section, Customs House, Kolkata, is under challenge. In the impugned order, the Commissioner returned a finding that "refund of erroneous duty paid would be available only upon setting aside the said assessment order of appropriate officer by an appropriate appellate authority" and based thereon, she rejected the claim for refund of the petitioners under Section 27 of the Customs Act, 1962.

3. On perusal of the Commissioner''s order, it is evident that an amendment to Section 27 of the Act, made operative with effect from April 8, 2011, as well as a decision of an Hon''ble Division Bench of the Delhi High Court, dated February 26, 2016, in W.P. (C) No. 523 of 2016 (M/s. Micromax Infomatics Ltd. v. Union of India and Ors.) [2016 (335) E.L.T. 446 (Del).] which the petitioner perceived to

 

be of immense worth in support of its claim, were placed before the Commissioner for her consideration, but were not considered at all. Non-application of mind by the Commissioner is, thus, apparent.

4. Although an appellate remedy is available to the petitioner, this Bench is not inclined to relegate it to the appellate remedy, for, there appears to be a clear case of erroneous exercise of jurisdiction.

5. The order impugned in W.P. No. 473 of 2016 stands set aside. The application for refund consequently revives and shall be considered and disposed of afresh by the Commissioner upon granting appropriate opportunity of hearing to the petitioner and by passing a reasoned order as early as possible, preferably within four weeks from date of receipt of a copy of this order.

6. Since in the other writ petitions similar orders are under challenge, the same too stand set aside for the reason assigned while setting aside the order dated March 28, 2016 in W.P. No. 473 of 2016.

7. The direction for reconsideration of the applications for refund, as made in W.P. No. 473 of 2016, shall be followed mutatis mutandis in respect of the other petitioners.

8. Let a photocopy of this order, duly countersigned by the Assistant Registrar attached to this Bench be retained with the records with the other writ petitions except W.P. No. 473 of 2016.