OD 16

ORDER SHEET
CUSTA/87/2025
IA NO: GA/1/2025, GA/2/2025
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

COMMISSIONER OF CUSTOMS (PORT)
VS
M/S MAHAVIR CANCER SANSTHAN

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 7th April, 2026.

Appearance:
Mr.Bhaskar Prasad Banerjee, Adv.
. . .for the appellant.

The Court: Affidavit of service filed today be kept with the record.

Heard learned counsel appearing for the appellant. No one appears for the respondent/assessee even after proper service.

There is a delay of 16 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application being GA 1 of 2025 is allowed.

The appeal is admitted on the following substantial questions of law for consideration.

> "(a) Whether the order of the Learned Tribunal is perverse, contrary to the records, contrary to the said legal position in as much as the

respondent voluntarily submitted before the adjudicating authority, being the Commissioner of Customs (Port), and submitted its representation dated 27th August, 2018 before the said Commissioner and allowed the said Commissioner to decide the matter on merits and as such since the show cause notice has merged with the adjudication order, the jurisdictional issue raised by the Learned Tribunal with regard to the locus of the Deputy Commissioner of Customs to issue the show cause notice cannot be gone into or could not have been decided by the learned Tribunal ?

(b) Whether the Leaned Tribunal erred in law in mis-interpreting the provisions of Section 28(1)(a), Section 28(9) when the show cause issuing authority, Deputy Commissioner of Customs, is also the designated officer under Section 28 of the Customs Act and that for adjudication of cases, Section 2(34) read with Section 122 of the Customs Act designated the proper officer for adjudication of cases based on the nature and value of the case read with Notification No. 50/2018-Customs (N.T) dated 8th June, 2018 and that the limit of duty or value of goods is mentioned for the purpose of adjudication of cases and as such the findings arrived by the Learned Tribunal regarding the definition of proper officer is not sustainable in law ?

(c) Whether the Learned Tribunal erred in law and fact in combining the show cause issuing authority with the adjudicating authority, when for issuance of the show cause notice, an officer assigned the relevant function (like assessment or investigation) by the CBIC or the Commissioner under Section 2(34) is competent enough to issue a show cause notice under the Customs Act?"

The appellant shall file requisite number of informal paper books prepared out of Court including therein all relevant materials used before the learned Court below within ten weeks from date and serve copies thereof upon the learned advocate for the respondent.

Settlement of index and all other formalities are dispensed with.

Since the respondent is not represented, service of notice of appeal be effected upon them.

Let the matter appear in the monthly list of July, 2026.

IA No.GA/2/2025 is disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

Sp/