
(1990) 12 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 3587 of 1990

Anil Jamnadas Chhatbar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Citation : (1991) 32 ECC 274 : (1991) 36 ECR 53 : (1993) 63 ELT 19

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Advocate : Dr. N.R. Kantawala, instructed by M/s. Kantawala and Co, for the Appellant; Shri S.M. Shah, for the Respondent

Judgement

S.P. Bharucha, J.—Rule, returnable forthwith. Mr. S.M. Shah waives service on behalf of the respondents. Heard. On an earlier writ petition filed in respect of the same consignment, an order was passed on 20th June 1990 whereby the 2nd respondent was directed to give a personal hearing to the petitioner pursuant to a Query Memo on or before 9th July 1990 and thereafter to pass an order and serve it upon the petitioner on or before 24th July 1990. The order contemplated by the said order was passed on 19th July 1990. The 2nd respondent stated in the order that "Some more enquiries could be made regarding the quotation and I might have given some more opportunity to the Counsel to lead evident to the contrary in this behalf. However, this cannot be done as the Hon"ble High Court has directed me to pass the order on or before 24-7-1990."

2. A second writ petition was filed impugning the order dated 19th July 1990. The ground was that the order had been passed in spite of insufficiency of material and insufficiency of opportunity to the petitioner. The learned single Judge was of the opinion that the petitioner had an alternate remedy in the form of an appeal and he dismissed the petition. An appeal was filed against the order of the single Judge whereon the appeal Court passed an order on 12th October 1990. The operative part of the order reads thus :

"By consent order dated 19th July 1990 (Exhibit-O to the petition) is set aside.

Mr. Desai on behalf of the respondents states that the 2nd respondent will hear the appellants and pass a fresh order within three weeks from today. The 2nd respondent will afford to the appellants the liberty to produce documents in support of their case and shall supply to the appellants documents upon which the authorities propose to rely.

Order on the petition accordingly."

3. This third writ petition is filed because no order has been passed by the 2nd respondent within 3 weeks from 12th October 1990 nor, indeed, till today, nor has he heard the petitioner. An affidavit has been filed by the Assistant Collector of Customs, Air Cargo. He states that the hearing could not be given due to the "bona fide reason" that the "Air Cargo Complex of the Customs received communication about the passing of the order dated 12-10-1990 of the Hon'ble Court for hearing the petitioner only after the expiry of the period of 3 weeks when the importer's Clearing Agents under cover of the letter dated 9-11-1990 submitted a copy of the court's order".

4. Mr. R. V. Desai, who appeared on behalf of the respondents before the appeal Court, was instructed by the advocates on record of the Union of India. We have no doubt that, apart from the instructions which Mr. Desai must have obtained from the advocates on record, he could not have made the statement he did without being instructed to do so by an officer of the Customs. Even were this not so, the reason put forward in the affidavit-in-reply is untenable and the apology for not giving a hearing as directed and till today unacceptable.

5. In the circumstances, the respondents are directed to allow clearance forthwith of the goods covered by Ex. to the petition as per the value declared thereunder and to issue a detention certificate for the period from the filing of the Bill of Entry till the clearance of the goods.

6. It is necessary to state that there is no obligation on the part of petitioner or his advocates to inform the respondents of our order. They are appearing here before us through counsel and advocates on record and we have seen counsel obtain instructions from an officer of the Customs.

7. The hearing on the Query Memo dated 20th March 1990 can be proceeded with but we now need not set down any time limit for the purpose. The respondents to proceed according to law. We also decline, in the circumstances of the case, to ask the petitioner to give any security or any bond in that behalf.

8. The respondents shall pay to the petitioner the costs of the petition.

9. At this stage Mr. Shah states that Mr. R. V. Desai, who appeared for the respondents before the appeal Court is present and said that he made the statement before the appeal Court on 12th October 1990 after taking instructions from an officer of the Customs department.