

(2003) 08 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 1636 of 2003

Devang Rasiklal Vora

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35C

Citation : (2004) 3 BomCR 450 : (2004) 92 ECC 648 : (2003) 111 ECR 658 : (2003) 158 ELT 30 : (2004) 2 MhLj 208

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : V.S. Nankani, N.S. Thakkar and H.P. Modh, for the Appellant; S.B. Jaisinghani, ASG and P.S. Jetly, instructed by T.C. Kaushik, for the Respondent

Judgement

V.C. Daga, J.—This petition is directed against the common order dated 6th May, 2003 passed by the Customs, Excise and Gold (Control), Appellate Tribunal, West Zonal Bench, Mumbai ("CEGAT" for short); whereby the Appeal Nos. C/614 of 1988 and C/500 of 1988 filed by the petitioner came to be dismissed. Considering the ground on which we are disposing of this petition and since we are not touching the merits of the matter, the narration of facts involved in this petition is not necessary.

2. Learned Counsel for the petitioner has made serious complaint while challenging the impugned order and contended that the said order has been passed by the CEGAT after more than two years from the date of hearing of the appeal. It is not in dispute that the appeals filed by the petitioner were heard on 19th April, 2001 and the appeals were closed for orders and reserved for judgment. The order came to be passed on 6th May, 2003. The same was communicated to the petitioner on 13th June, 2003.

3. According to the petitioner, the passage of time of almost more than two years has caused serious prejudice to the petitioner inasmuch as the CEGAT has forgotten to consider, discuss, examine and deal with various relevant

contentions which were actually raised in appeals and argued by the Counsel appearing for the petitioner before CEGAT. The petitioner submits that apart from relevant facts the CEGAT has also completely ignored and overlooked its own earlier orders though cited; wherein on the same set of facts. Allegations and evidences the CEGAT had upheld the plea of breach of principles of natural justice and set aside the orders passed by the same Collector of Customs. It is alleged that copies of the said two earlier orders of the CEGAT passed in petitioner's own case being orders dated 24th January, 2000 and 1st June, 2000 (Exh. "A" and "B") were brought to the notice of the CEGAT, which CEGAT omitted to consider in the impugned order.

4. There is no counter affidavit on behalf of the Revenue to controvert the above allegations made by the learned Counsel for the petitioner. Having examined the impugned order passed by the CEGAT, we find much substance in the complaint made by the learned Counsel for the petitioner. Admittedly, there is no reference by the CEGAT to its earlier orders, passed in petitioner's own case, on 24th January, 2000 and 1st June, 2000. In spite of the fact that the facts involved therein; were more or less similar to the present one.

5. The learned Counsel for the petitioner also took us through the impugned order passed by the CEGAT and brought to our notice that no findings on merits of the case are recorded by the CEGAT which, according to the petitioner, exhibits complete non-application of mind on the part of the CEGAT. In the submission of the petitioner, all this has happened because of delayed delivery of judgment on the part of the CEGAT.

6. The inordinate and unexplained delay in pronouncement of the judgment or order is alleged to have actually negated the right of appeal conferred by the Statute. Any procedure or course of action which does not ensure a reasonable quick adjudication has been termed to be unjust.

7. It has been held time and again that justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, Justice withheld is even worse than that. The Apex Court in the case of Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, had occasion to take serious note of the prejudice normally caused to the litigant due to delayed pronouncement of the judgment for the reason which are not attributable either to the litigant or to the State or to the legal profession. The learned Counsel for the petitioner has referred to various judgments of various High Courts, reference of which is not necessary, to show that only on the ground of delay in rendering the judgment for a period ranging from 6 months to 10 months judgments were held to be bad in law and set aside.

8. In R.C. Sharma v. Union of India (1976) 3 SCC 474, the Apex Court after noticing that the CPC did not provide a time-limit in delivery of a judgment, held :

"Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment. Unless explained by exceptional or

extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the result of litigation. This confidence tends to be shaken if there is excessive delay between judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done."

9. Recently, the Apex Court in the case of *Anil Rai v. State of Bihar* had also an occasion to consider the serious issue of delayed delivery of judgment by some of the High Courts and had occasion to lay down certain guidelines regarding pronouncement of judgments by the High Courts. The similar guidelines can conveniently be laid down for the CEGAT so as to prevent delayed delivery of the judgments which at the end of the day results in denial of justice as happened in the instant case,

10. We, therefore, direct the President of the CEGAT to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of *Anil Rai v. State of Bihar* (supra) and to issue appropriate administrative directions to all the benches of the CEGAT in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the CEGAT and followed strictly by all the benches of the CEGAT.

11. Now turning to the merits of the challenges made out to the impugned order, prima facie, we are satisfied that some of the vital points raised in the petition and canvassed before us are not to be found in the judgment of the CEGAT though, according to the learned Counsel for the petitioner, they were canvassed before the CEGAT. Omission to make reference to the contentions canvassed can only be attributed to the delayed delivery of judgment. In the circumstances, without going to the merits or demerits of the impugned order, delay in delivery of judgment by itself is sufficient to set aside the impugned order passed by the CEGAT to the extent it is challenged by the petitioner arising out of Appeal Nos. C/500 of 1988 and C/614 of 1988.

12. In the result, petition is allowed. The impugned order is set aside to the extent it is challenged and the appeals being Appeal Nos. C/500 of 1988 and C/614 of 1988 are restored to the file of the CEGAT with direction to rehear of the said appeals filed at the instance of the petitioner and decide the same afresh with a reasoned order dealing with all contentions raised and canvassed on its own merits. All the rival contentions are kept open for being decided by the CEGAT on its own merits.

Petition stands disposed of in terms of this order with no order as to costs.

13. Copy of this order be sent to the President of the CEGAT for action in accordance with the directions issued therein and for reporting compliance thereof within three months from the receipt of this order.