

(1990) 06 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 1347 of 1990

Dia-ichi Karkaria Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

Citation : (1990) 50 ELT 341

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : Shri D.B. Shroff, instructed by M/s. Crawford Bayley and Company, for the Appellant; Miss S.I. Shah, for the Respondent

Judgement

1. Rule returnable forthwith. Miss Shah for respondents waives service. Heard counsel.

2. The grievance of the petitioners is about failure of respondent No. 2 to dispose of the appeal filed by the petitioners and in respect of which hearing was given in February 1987. The petitioners complain that the appeal has remained undisposed for a period of over three years and the petitioners are deprived of the relief sought.

The petitioners have imported "polypropylene Glycol 2020" and "polypropylene Glycol 1010" in September 1978. The products were assessed to basic Customs duty and to additional duty. In appeal from the assessment, the Appellate Collector of Bombay upheld the petitioners' claim for classification of the goods under different heading but rejected the claim in respect of additional duty. The Central Government then moved Customs, Excise and Gold (Control) Appellate Tribunal and by judgment dated December 20, 1984 the Tribunal upheld the claim of the petitioners. The petitioners were entitled to refund of certain amount. The petitioners filed their refund claim on February 4, 1985. The Assistant Collector passed order dated September 9, 1986 rejecting the refund claim. Against the order of the Assistant Collector, the petitioners preferred

appeal before respondent No. 2.

3. The respondent No. 2 heard the matter as far back as February 25, 1987. Though more than three years have lapsed since then and the petitioners had supplied all the requisite documents, the appeal has remained undisposed and that gave rise to the filing of the present petition on April 17, 1990. Shri Shroff, learned counsel appearing on behalf of the petitioners, submitted that respondent No. 2 has failed to discharge his statutory duty of deciding the appeal. The learned counsel urged that respondent No. 2 cannot deprive the petitioners of an advantage of refund by keeping the appeal pending for over three years after conclusion of arguments. The submission is correct and deserves acceptance. Miss Shah, learned counsel appearing on behalf of the respondents, has no answer to the claim that the appeal should be disposed of forthwith.

Shri Shroff for the petitioners and Miss Shah for the respondents inform that the Officer who had heard the appeal has been transferred and the new incumbent has taken over. It is, therefore, necessary to direct respondent No. 2 who is in office to re-hear the petitioners' appeal and dispose of it forthwith.

4. Accordingly, respondent No. 2 is directed to give a fresh hearing to the petitioners and dispose of the appeal within a period of four weeks from the date of receipt of the order and also communicate the decision to the petitioners. The respondents shall pay the costs of the petition.