
(1997) 02 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 234 of 1997

Dunlop India Ltd.

APPELLANT

Vs

CEGAT, Eastern Bench

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Citation : (1997) 93 ELT 680

Hon'ble Judges : V.K. Gupta, J

Bench : Single Bench

Judgement

V.K. Gupta, J.—Arising out of an order passed by the Collector of Central Excise, Calcutta-II on 30th October, 1991, the petitioner preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Calcutta. Along with the appeal an application for stay was also moved by the petitioner. However, the stay matter having been heard by a Division Bench of a Tribunal. The two learned Members of the Bench differed on the question of staying the execution of the order appealed against before them inasmuch as, they passed differing orders regarding the amount of money to be deposited by the petitioner pending the disposal of the appeal before the Tribunal.

2, The two Members having thus differed, a reference was made to the President of the Tribunal for entrusting the stay matter to a third Member. Third Member also vide his order passed on 26th June, 1995 returned the reference to the Division Bench for passing suitable order. In the meantime the petitioner filed a miscellaneous application seeking modification of the order passed by the two Members of the Tribunal on 13th May, 1993. This matter having been taken up by the Division Bench comprising of Shri S. Kalyanam, Vice President and Shri P.C. Jain, Member (Technical) it was decided, after hearing both the sides and recording no objection of the department that the question relating to the stay be decided in its entirety and substantiality by the Division Bench itself. Since however the stay petition was not listed for consideration on 4-1-1996, when the aforesaid order was passed, the Division Bench decided to postpone the

consideration of the stay matter and accordingly fixed the stay application on 9-2-1996. Accordingly, while passing this order the miscellaneous application for modification of the stay order was disposed of by the Division Bench. On 9th February, 1996 however when the stay matter was taken up by the Division Bench of the Tribunal, this time that of different composition of Members, viz., Shri K. Sankararaman, Member (Technical) and Shri T.P. Nambiar, Member (Judicial), they declined to hear the stay matter on the basis of which certain observation that came to be made by them in the order which they passed on 9-2-1996. While thus declining to hear the stay matter they referred two questions formulated by them in the concluding part of the order to the President of the Tribunal. It is not necessary for me to deal upon these two questions or other observations made by this Division Bench in the order dated 9-2-1996 for the simple reason that it was not open to this Division Bench to decline to hear the stay matter, once an earlier Division Bench vide order passed on 4-1-1996 had decided to hear the stay matter. Both the Division Benches had concurrent jurisdiction and both are collateral. Judicial discipline and propriety demanded that if one Division Bench had taken a decision, upon hearing the parties and on consideration of all facts and circumstances that it would be appropriate for the Tribunal, the Division Bench in the present case, to hear the stay matter in its entirety and substantiality, upsetting that order and overruling the operative portion thereof, the second Division Bench ought not have substituted its new opinion with that of the first Division Bench. Judicial discipline and propriety demanded that when the matter came up for consideration on 9-2-1996, the Division Bench, of whatever composition should have taken up the stay matter in the light of the observation made by the earlier Division Bench on 4-1-1996 and should have decided the stay matter accordingly.

3. In this view of the matter therefore the order passed on 9-2-1996 cannot be sustained and is accordingly set aside.

4. This petition for the foregoing reasons is allowed. It is directed that a Division Bench of the Tribunal shall decide the stay matter in line and conformity with the observations and directions contained in the order of the Division Bench of the Tribunal passed on 4-1-1996. Nothing stated herein shall be construed as any express of opinion by this Court regarding the merits of the case.

5. It is hoped and expected that the Division Bench shall decide this matter very expeditiously preferably within a period of three months.

6. Since no affidavit-in-opposition has been filed the allegations made in the petition need not be deemed to have been accepted by the respondents.

7. The writ petition is disposed of accordingly.

8. All parties are to act on a signed copy of this dictated order on the usual undertaking.