
(1993) 06 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. (Sic) of 1993

Govind Ram Agarwal

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 28-06-1993

Acts Referred:

Customs Act, 1962 — Section 129(5)

Citation : (1993) 67 ELT 215

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Samir Chakraborty and Sudhir Kumar Mehta, for the Appellant; N.C. Roy Choudhry, for the Respondent

Judgement

Ruma Pal, J.—The short point involved in this writ petition is whether a member of the Tribunal to whom a dispute has been referred u/s 129(5) of the Customs Act, 1962 can in turn refer the matter to the President for making a further reference to a larger Bench. In this case the disputes between the petitioner and the respondent authorities were heard by a Bench of the Tribunal constituted by two members. The members differed. In view of the difference of opinion a reference was made to the President of the Appellate Tribunal u/s 129(5) of the Act. The President in turn referred the case to Sri S. Kalyanam for hearing the case. Sri Kalyanam did not hear the case but appears to have indicated to the parties that he would refer the matter back to the President to constitute a larger Bench to hear the case. No formal order has been passed by Sri Kalyanam till today. The petitioner then filed this writ application contending that Sri Kalyanam had no power to refer the matter to the President to constitute a larger Bench and that he was bound to decide the case. The writ application was opposed by the respondents who contended that Sri Kalyanam was authorised to refer the matter to the President in view of the fact that there was a possibility of his taking a view which was divergent from the view of both the members of the Tribunal who had originally decided the case.

2. In my view the language of Section 129(5) allows for members of the Tribunal to make a reference to the President only when there is a difference of opinion. The difference is therefore a pre-condition to the making of the reference. In this case it cannot be said that Sri Kalyanam has in fact differed with the view of any other member of the Tribunal. The statutory provisions also provide that it is the President who is required to make a further reference to other member or members of the Tribunal for a decision of the case. There is no provision in the statute by which the member or members to whom such reference is made by the President can refer the matter back to the President without deciding the matter. In my view therefore it is incumbent upon Sri Kalyanam to hear the point or points on which the members of the Bench of the Tribunal as originally constituted differed and to decide the matter in accordance with law. In view of the delay which has been occasioned by the indecision on the part of Sri Kalyanam in the matter, Sri Kalyanam is requested to dispose of the matter as expeditiously as possible and preferably within a period of four months from the date of service of a copy of this order upon him. It is made clear that this court has not considered the merits of the disputes between the parties in any manner whatsoever.

3. All parties concerned to act on the signed copy of this dictated order on the usual undertaking.