

**(1997) 04 DEL CK 0014**

**In the Delhi High Court**

**Case No :** C. M. (M) No. 146/97, Against the Order 22-11- 1996, passed by U. L. Bhat, J., President, CEGAT, New Delhi in Misc. Application No. E-458/87 and 70/88 in E-1997/86-B1

Modern Metal Works

APPELLANT

Vs

Cegat

RESPONDENT

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**Date of Decision :** 03-04-1997

**Acts Referred:**

**Citation :** (1997) 92 ELT 50

**Hon'ble Judges :** Jaspal Singh, J

**Bench :** Single Bench

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## **Judgement**

1. Aggrieved by an order of May 27, 1988 passed by the Collector of Central Excise. M/s. Modern Metal Works, who is the petitioner before me, filed an appeal before the Appellate Tribunal which was disposed of on 29th August, 1986 with a direction to the Principal Collector to dispose of the matter within a period of six months from the date of the receipt of the order. However, it appears that the matter was not heard by the Principal Collector himself but by the Director Publication and that too not within the period prescribed. Consequent upon the order so passed an application was moved by the Department for condensation of delay. The petitioner firm, however, opposed the application. This led to a difference of opinion on the question as to whether delay could be condoned or not. On account of that difference of opinion the following question was referred by the Appellate Tribunal to the President in terms of the Proviso to Section 129C(5) of the Customs Act read with Section 35D of the Central Excises and Salt Act :

"Is the extension of time sought for the Principal Collector of Central Excise, New Delhi to be granted or not ?"

"Aggrieved by the said order of reference and so also by the order dated 3rd May, 1988 by a Member of the Tribunal namely, Shri V. T. Raghavachari that the delay could be condoned, M/s. Modern Metal Works filed a writ petition in the

High Court bearing No. 2495/90. The orders of 3rd May, 1988 and 27th May, 1988 were challenged in the writ petition on number of grounds. One of the grounds so taken, was as follows :

"The adjudication done by Shri B. P. Varma was not in terms of the order of the Tribunal. Shri B. P. Varma was not appointed as a Collector not the Principal Collector. He has no jurisdiction to pass an order when the direction of the Tribunal was to the Principal Collector. Further Shri B. P. Varma had no power to adjudicate the case at a time when the period for read judication has already been expired."

The writ petition came up before Division Bench-I which disposed of the same on 23rd September, 1991. The relevant portion of the order runs as under :

"We are of the view that the matter is premature and the points raised in the writ petition should be raised before the President of the Tribunal and we have no doubt that he will decide the points, if they are raised before him. If the petitioner feels dissatisfied with the order of the President, it would be open to the petitioner to raise those points before this court.

It so happened that after the said order and since there was, at that point of time, no President, the matter was dealt with by the Vice President who nominated a Member to deal with the questions raised. In this respect the order of the Vice President dated 31st August, 1995 may be perused. The relevant portion of the order, while referring to the order of DB-I said :

"Since the competent authority in those days was President, this authority was mentioned by designation, but as the law has since changed and the President should either hear himself or nominate a third Member to resolve the difference of opinion, Therefore, the matter could be heard by a Member or Bench nominated for the purpose."

The petitioner firm finding the order unpalatable, once again approached the High Court. The writ petition was disposed of by another Division Bench by its order dated 12th January, 1996. It appears that by 12th January, 1996 a retired Chief Justice has already taken over as the President of the Tribunal. The said Division Bench while directing the petitioner to move an application before the President expressed the hope that on receipt of such an application he will pass appropriate orders. Consequent upon that order the matter came up before the President.

2. While referring to the order of D. B. I passed on 23rd September, 1991 the President passed an order on 15th March, 1996. The order, at places, makes one sad, more so as it comes from the pen of a retired Chief Justice. I may, in this respect, refer to paragraphs 2 & 3 of the order : Here they are :

"2. The controversy whether the President alone is competent to hear the difference of opinion or whether he can require a Member to hear it was not raised before the before the Delhi High Court and the High Court did not purport

to rule on any such contention. I Therefore find it difficult to understand the order of the High Court as containing a direction that only the President can hear the difference of opinion.

3. Speaking myself, I fail to see tile logic of the insistence of the assessed that the President himself should hear the reference showing that the President is busy presiding over the Division Bench and also Larger Benches."

The order of the Division Bench-I was clear. I contained a direction to the President and to the President alone. What was it then which the President found "difficult to understand" ? The order being there in clear and unambiguous terms. What was the point in searching for the "logic" for insistence by the party for abeyance of that order ?

3. Mercifully, the President did decide to hear the matter. While condoning the delay by his order dated 22nd November, 1996 the President still avoided to answer all the questions raised. His order of 15th March, 1996 read along with the order of 22nd November, 1996 and his refusal to deal with all the questions raised despite the order of D. B. I, dated 23rd September, 1991 directing him to decide them, makes an unfortunate reading, to say the least. While saying so, I have particularly in my mind paragraph 8 of the order of the President dated 22nd December, 1996. The point in issue referred to in that paragraph was specifically raised in the writ petition which led to the order of D. B. I, dated 23rd September, 1991 and with regard to which the Court had directed the President to give his findings. And yet, he gave no finding on it.

4. I have taken all this exercise to highlight as to how the order of D. B. I has been flouted. If the President finds it difficult to understand the order. I feel it would be most appropriate for D. B. I itself to make him understand it. It would under the circumstances be most appropriate if the matter is taken up by D. B. I itself and dealt with at its end. Let the matter be placed before D. B. I on 8th April, 1997 after obtaining appropriate orders from Hon"ble the Acting Chief Justice. Till then, the proceedings before the Tribunal shall remain stayed. dusty also. However, nothing said by me shall be taken as an expression of opinion of the merits of the petition.