
(1999) 03 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 2646 of 1998

Naveet Kumar Didwania Ltd.

APPELLANT

Vs

Commr. of Customs

RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Citation : (1999) 65 ECC 28 : (1999) 111 ELT 24

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : None, for the Appellant; N.C. Roychowdhury, for the Respondent

Judgement

Ajoy Nath Ray, J.—The petitioner is enjoying an order passed in February, 1998 by the CEGAT which entitles it to unconditionally release of synthetic granules which are the subject matter of the present writ petition.

2. The learned Counsel for the petitioner submitted on the basis of three cases The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, , Union of India and others Vs. Kamlakshi Finance Corporation Ltd., , Grasim Industries Ltd. Vs. Collector Of Central Excise, Madras, (Madras, Single J.)] the necessity of lower departmental authorities following the orders and dictates of those placed higher up in the department.

3. According to the petitioner's case the CEGAT having passed the order of unconditional release the above principle of law takes this shape in this case, that the authorities should release the goods and give full effect to the CEGAT order.

4. Mr. Roychowdhury, appearing for the respondents, submitted that the respondents" have filed an Appeal to the Supreme Court and that they are entitled to do so because this is a disputed valuation matter.

5. He also submitted that communication has been received from the respondents" learned advocates in New Delhi that the appeal and the stay

application are awaiting regular listing.

6. Mr. Roychowdhury submitted that if interim orders of release are passed to-day, the Supreme Court appeals might become infructuous. He further submitted that the writ petitioners should not have naved the High Court but should have moved the Supreme Court if they wanted a release.

7. It is settled law that the filing of an appeal, even a statutory one does not operate as a stay. Were I to accept Mr. Roychowdhury's submission, I would be usurping the powers which rest only in the Supreme Court for staying the operation of the CEGAT order.

8. Nor it is for the High Court to direct a party to approach the Supreme Court when the jurisdiction to pass appropriate orders vests in the High Court. Doing so would be shirking duty and not giving relief even when one is entitled to give it.

9. More than one year having passed from the date of the CEGAT order it appears to be unreasonable that the respondents do not give it full effect even now.

10. The order and observations are without prejudice.

11. Rule as prayed for.

12. Matter is made returnable 16 weeks hence.

13. The writ petitioners will pay rent charge for interim release for the present but will be entitled to claim it from the respondents in case they ultimately succeed in the writ.

14. There will be interim orders in terms of prayers (f) and (h) of the writ petition.

15. All parties and all others concerned to act on an authenticated signed xerox copy of this dictated order on the usual undertakings.