

(2016) 05 DEL CK 0093

In the Delhi High Court

Case No : Writ Petition (C) No. 4017 of 2016 and C.M. Nos. 16944-16945 & 16943 of 2016

Simplex Infrastructures Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Citation : (2016) 336 ELT 385

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Sujit Ghosh with Ms. Mannat Waraich, Advocates, for the Petitioner; Kirtiman Singh, CGSC with Ms. Rajul Jain and Waize Ali Noor, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

CM 16944 of 2016 and 16945 of 2016 : Allowed, subject to all just exceptions.

W.P.(C) 4017 of 2016 and CM 16943 of 2016

2. The challenge in this Petition is to an order dated 29th April, 2016 passed by the Department of Revenue, Ministry of Finance, Government of India authorising the Member (Judicial), Customs, Central Excise and Service Tax Appellate Tribunal (?CESTAT?) to prepare rosters for reassigning the Bench matters to the Members beyond 29th April, 2016 "till the joining of new President, CESTAT or until further orders, for smooth functioning of the Tribunal."

3. According to learned counsel for the Petitioner in terms of Sections 129(1) and 129C(6) of the Customs Act, 1962 (?Act?), Section 35D of the Central Excise Act read with Rules 3 and 4 of the CESTAT (Procedure) Rules, 1982 it is the President of the CESTAT and in his absence the Vice-President who can prepare rosters for reassigning the Bench hearing the matters that were mentioned in the impugned order. The Petitioner's grievance is that it is being compelled to appear before a forum which has no power or jurisdiction to hear cases.

4. The Court finds that under Section 161 of the Act, there is a general power to the Central Government to act if any difficulty arises in giving effect to the provisions of the Act. The Government may, by general or special order, issue directions not inconsistent with the provisions of the Act when it appears to be necessary or expedient for the purpose of removing the difficulty.

5. The previous President, CESTAT retired on 3rd March, 2016. Thereafter the Vice-President prepared the rosters of the Benches till 29th April, 2016 after which there has been no Vice-President of the CESTAT either. It is in the above peculiar circumstances, to prevent work coming to a standstill that the Central Government considered it necessary to authorise the Member (Judicial) to prepare the rosters.

6. While the Court appreciates the necessity for taking the above step, at the same time, the Court is concerned that since more than two months now no President of the CESTAT has been appointed. In the meanwhile, even the post of the Vice-President has fallen vacant. The impugned order can at best be treated as temporary arrangement for a certain period and cannot continue indefinitely.

7. Consequently, with a view to ensure that there is no unnecessary delay in the filling up of the posts of the President and Vice-President of the CESTAT, which as is known, has a large pendency of matters, the Court issues notice in this Petition limited to the above aspect. The Central Government will keep the Court apprised, by way of affidavit, by the next date of hearing as to the steps taken to fill up the posts of President and Vice-President of the CESTAT. It is made clear that no interim direction is being issued and the matters will proceed as per the roster prepared by the Member (Judicial) of the CESTAT in the meanwhile.

8. List on 30th May, 2016.

9. Order Dasti under the signature of Court Master.