
(1997) 09 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 1792 of 1997

Wellman Incandescent India Ltd.

APPELLANT

Vs

Supdt. of Central Excise

RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Citation : (1997) 96 ELT 31

Hon'ble Judges : Vinod Kumar Gupta, J

Bench : Single Bench

Judgement

Vinod Kumar Gupta, J.—The point involved in this petition is very short. The parties are agreed that the writ petition along with application for stay may be taken up for final disposal and the same are disposed of without any affidavit in opposition being filed thereto. However, the respondents do not admit any of the allegations in the writ application.

2. The point for consideration is the right of the petitioner to file appeal against the order dated 17-1-1991 passed by the Additional Collector (P & V) of Central Excise, Calcutta-II Collectorate. The petitioner's grievance is that it had been prevented all along from filing the appeal because of the non-communication of the order from the Additional Collector to the petitioner. The grievance also is that since the petitioner could not get certified copy of the order dated 17-1-1991, it could not prefer an appeal because the Rules cast an obligation for every intending appellant to file the memorandum of appeal along with certified copy of the order sought to be appealed against.

3. After hearing the learned Advocates appearing for the parties and upon consideration of all aspects of the matter, I dispose of the writ application and pass the following order:

Within one week from today it shall be open to the petitioner to make an application to the appropriate authority for obtaining certified/attested copy of the order dated 17-1-1991. Within one week thereafter the appropriate authority

to whom such application is made shall issue the petitioner the certified/attested copy of the said order upon payment of the requisite fees, if any, and completion of other formalities, if required. Within two weeks from the date of receipt of the certified/attested copy of the order dated 17-1-1991 the petitioner shall be at liberty to prefer an appeal against the order dated 17-1-1991 to the appropriate appellate forum along with the application for condonation of delay in filing the appeal and for stay of recovery of the amount in question.

4. If the appellant fails to take any of the aforesaid steps within the period prescribed herein, the respondents shall be absolved of their obligation to act correspondingly. It shall be entirely up to the appellate forum to consider and decide the question of either condonation of delay in filing the appeal, of course upon the merits of the case, and as to whether any interim stay is required to be granted in favour of the petitioner or not.

5. The petitioner shall also be free to urge before the appropriate appellate forum that its appeal is not time-barred if it decides not to file any application for condonation of delay and it shall be open to the appellate forum to pass appropriate orders in the appeal.

6. Nothing said herein shall in anyway be construed as any expression of opinion by this Court on any such aspect of the matter. For a period of four weeks from today and no more, the impugned recovery against the appellant shall remain stayed. This interim stay order is being passed only to enable the appellant to prefer an appeal, as indicated hereinabove. After the expiry of four weeks, the question of effecting recovery of the amount in question against the petitioner shall be guided by any order that the appellate forum may pass.

7. This petition is disposed of accordingly.

8. There will be no order as to costs.

9. All parties are to act on a xerox signed copy of this dictated order upon usual undertaking.