

Sunshine International Vs. Cegat,

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Court : Allahabad

Decided On : Jul-04-2003

Reported in : 2003(89)ECC429

Judge : Prakash Krishna, J.

Appeal No. : Civil Misc. Writ Petition No. 742 of 2001

Appellant : Sunshine International

Respondent : Cegat, ;commissioner of Customs, Icd, ;joint Director General of Foreign Trade and the Chairman, S.a

Advocate for Def. : S.N. Srivastava, S.S.C. and ;Vikram Gulati, S.C.

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Disposition : Writ petition allowed

Judgement :

Prakash Krishna, J.

1. This petition is directed against the order dated 22 March, 2001 passed by the respondent No. 1 in appeal No. C/37/2001-NB. By the said order the application of the petitioner for stay-cum-waiver has been rejected ex-parte. On the perusal of the order of the respondent No. 1 it appears that a notice fixing the date was

served on the petitioner. The petitioner made an endorsement on the copy of the notice to the effect that the business partner is on export promotion tour and busy in personal matter. It was prayed by the said endorsement that next date for personal appearance be fixed in the last week of May, 2001.

2. The Tribunal refused to adjourn the case and proceeded to decide the waiver-cum-stay application ex-parte. The Tribunal directed the appellants to pre-deposit the full duty amount of Rs. 24,876 within a period of 8 weeks from the date of receipt of this order. On deposit of the aforesaid amount, Rs. 2 lakhs will be waived and recovery will be stayed till the disposal of the appeal.

3. This Court by the order dated 21st May, 2001 directed that till the next date of listing, the appeal filed by the petitioner shall not be dismissed on the ground of non-compliance of the order dated 22nd March, 2001. I have been informed that the said appeal is still pending.

4. Heard Shri A.P. Mathur, learned Counsel for the petitioner and Shri Vikram Gulati, learned Standing Counsel for the Department. It was submitted by Shri Mathur that earlier no adjournment was sought for and for the first time due to unavoidable circumstances short adjournment was prayed for, which ought to have been granted. On the other hand Shri Vikram Gulati submitted that to grant or not to grant adjournment is within the discretion of the Tribunal and no interference is called for.

5. In para 13 of the writ petition it has been stated that the adjournment sought for was the first adjournment. This averment has not been specifically denied in para-14 of the counter affidavit. In reply to this much is stated that the counsel for the petitioner should have bothered to find out whether the request for adjournment has been granted or not. Grant of adjournment is basically a discretionary matter of the authority. But the discretion should be exercised in reasonable manner. The petitioner was not going to get any undue advantage by seeking adjournment and there was no mala fide on its part. Admittedly, the petitioner is engaged in the business of export. The business partner unfortunately was on export promotion tour when the waiver application was fixed for hearing before the Tribunal. Thus, the petitioner was prevented by sufficient cause in not appearing before the

Tribunal on the date fixed. The approach of Tribunal should be justice oriented. In view of above, in the interest of justice another opportunity of hearing ought to have been afforded by the Tribunal to the petitioner.

6. It is not disputed that the respondent No. 1 in deciding an appeal acts as quasi-judicial authority and cannot act arbitrarily. In refusing to grant an adjournment the Tribunal acts in the same capacity. When a party asks for an adjournment for certain reasons and the Court or quasi judicial authority does not propose to allow it, some reason must be given for rejecting the application. In the present case this was the first occasion when the petitioner sought the adjournment. It is true that the main object of vesting the discretion in the Court or Tribunal either to grant or not to grant adjournment is to prevent a party from improperly delaying the proceedings and abusing the process of Court, but at the same time unless there is a pressing necessity for proceeding with the case or an application for adjournment is obviously frivolous, the adjournment asked for should not be lightly refused. See *Taj Cutlery and Allied Agencies v. C.S.T.*, 1987 U.P.T.C. 1370. The aforesaid judgment was followed in *M/s. Tara Glass Chemical Industries v. C.S.T.*, 1988 U.P.T.C. 658. The adjournment sought for by the petitioner in the instant case was not a pretence to postpone the hearing and to delay the proceedings on false grounds.

7. In the facts of the present case I find that the view taken by the Tribunal is technical and it will not serve the interest of justice.

8. With regard to the above the impugned order dated 22 March, 2001 passed by the respondent No. 1 is quashed. The writ petition is allowed with the direction to the Tribunal to hear and decide the waiver-cum-stay application again, afresh after giving reasonable opportunity of hearing to the petitioner. The counsel for the petitioner, on behalf of the petitioner has given an undertaking that unnecessary adjournment shall not be sought for before the Tribunal and the petitioner will extend all cooperation for hearing of the appeal.

The writ petition is allowed.