

Gulshan Kumar Arora Vs. Cegat

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Court : Allahabad

Decided On : Sep-19-1996

Reported in : 2003(89)ECC751

Judge : Om Prakash and ;R.K. Singh, JJ.

Acts : Customs Act - Sections 108

Appeal No. : Civil Misc. Writ Petition No. 676 of 1996

Appellant : Gulshan Kumar Arora

Respondent : Cegat

Disposition : Appeal dismissed

Judgement :

ORDER

Om Prakash, J.

1. Heard Counsel for the parties.

By the impugned order dated 25-7.1996 the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi while disposing of the stay and waiver applications of the petitioner directed the petitioner to deposit Rs. 20,000 within six weeks before considering the latter's appeal. The order shows that the waiver application

of the petitioner was partially accepted by the Appellate Tribunal.

2. The Tribunal clearly stated in paragraph 4 of the impugned order that the direction to deposit Rs. 20,000 is given after considering the financial position of the petitioner.

3. Learned counsel for the petitioner submits before us that the impugned order was passed stating wrong facts. For example, the counsel for the petitioner urged before us that the Tribunal wrongly mentioned in the impugned order that 'The adjudicating officer in the impugned order mentioned that the applicant did not ask for cross-examination.' The submission of the counsel is that the Commissioner in his own order Annexure-2 to the writ petition stated as follows:

'None out of the above persons retracted his statement. Except Sri Vilal Ahmad S/o Sri Dildar Ahmad and Sri Gulshan Kumar Arora none replied the show cause notice. They were also given opportunity to state truth before the Superintendent of Customs by way of summons issued under Section 108 of the Customs Act. Several dates for personal hearing were also fixed and intimated to them, but they did not appear to give evidence in their defence.'

It is submitted by the counsel for the petitioner that the persons whom summons were issued under Section 108, failed to put in appearance and, therefore, the question of cross-examining them would not have arisen and, therefore, the Tribunal was in error in observing that the petitioner failed to cross-examine the parties. This may be true that the question of cross-examining those whom summons were issued may not have arisen since they failed to appear pursuant to the summons issued to them. However, the fact remains that the Appellate Tribunal look into consideration the financial position of the petitioner and came to the conclusion that on the facts and circumstances of the case waiver except Rs. 20,000 was reasonable. We do not see any prima facie illegality in such finding of the Appellate Tribunal, especially when no material was shown to establish that financial position was otherwise. The writ petition is accordingly, dismissed.