

Union of India Vs. Central Cables (P) Ltd. and ors.

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Court : Delhi

Decided On : Jan-28-1992

Reported in : 1992(22)DRJ268

Judge : G.C. Mittal and; Sat Pal, JJ.

Appeal No. : Letters Patent Appeal No. 49 of 1991

Appellant : Union of India

Respondent : Central Cables (P) Ltd. and ors.

Advocate for Pet/Ap. : P.K. Jain,; Vijender Jain and; Hema Kohli, Advs

Judgement :

(1) The petitioner, respondent herein, filed an appeal before the Cegat to challenge the order of the Customs authorities leveling duty of Rs. 16,44,436.00 and penalty of Rs. 1,50,000.00 . Before the Cegat an application for dispensing with the pre- deposit was made and the Cegat vide order dated 9th September, 1990 directed the petitioner to deposit the full amount of duty and dispensed with the pre-deposit of the penalty amount. Feeling aggrieved, the petitioner filed a writ petition in the Nagpur Bench of the Bombay High Court on 10th October, 1990, but could not get an interim order from the Court. Thereafter, on 15th November, 1990 the petitioner filed writ petition No.3612 of 1990 in this Court impugning the same order of the Cegat dated 9th September, 1990. In paragraph 15 of the writ petition, the petitioner made the following averments:

'THAT the Petitioner has not filed a similar writ petition in this or any other High Court or in the Supreme Court of India for similar relief.'

On 16th November, 1990, the writ petition came up for hearing before the admission Bench when adjournment was sought. On 23rd November, 1990 show-cause notice was issued. On 30th November, 1990 the case was again adjourned. On 3rd December, 1990 since none appeared for the respondents in the writ petition, despite Service. Rule was issued and the respondents in the writ petition, appellants herein, were restrained from demanding the sum of Rs. 16,44,436.00 . The stay matter came up before the learned Single Judge and the respondents filed a return, wherein they denied the averments made in para 15 of the writ petition and raised preliminary objections about the filing of the writ petition in the Nagpur Bench of the Bombay High Court, challenging the order of the Cegat dated 9th September, 1990 and brought to the notice of the Court that the petitioner had deliberately concealed material facts from this Court while raising pleas in para 15. Learned Single Judge vide impugned order dated 1st August, 1991 confirmed the interim order granted by the admission Bench. This is a Letters Patent Appeal by the Union of India.

(2) After hearing counsel for the parties, we are of the view that the order of stay confirmed by the learned Single Judge does not deserve to be sustained. We are taking serious note of the matter that this Court was misled in giving interim stay order, in view of the averments in para 15 of the writ petition that no similar writ petition was filed elsewhere. Counsel for the writ petitioner, who is now respondent before us, concedes that 'yes', writ petition was a filed in the Nagpur Bench of the Bombay High Court and instructions were issued to the Advocate at Nagpur to withdraw the writ petition from that Court. Even it is presumed that writ petition was withdrawn from Nagpur Bench before filing of the writ petition in this Court, does not justify the petitioner to raise the averments in para 15 of the writ petition, which has been reproduced above. The withdrawal of the writ petition is not material for the decision, but what is material is mis-statement of fact that no similar writ petition has been filed in any other High Court or Supreme Court of India, for seeking similar relief. Since we are of the view that the writ petitioner tried to mislead this Court in order to obtain an interim order from this Court, which he

could not get from Nagpur Bench of the Bombay High Court, we are of the view that the writ petitioner was not entitled to interim order. Accordingly, the appeal is allowed and the order of the learned Single Judge dated 1st August, 1991 is set aside and the prayer of stay in the writ petition is dismissed. It is made clear that the interim order passed in the writ petition is vacated.

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