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Indian Transformers Ltd. Vs. Cegat

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Court : Kerala

Decided On : Mar-27-1989

Reported in : 1989(23)LC656(Kerala); 1989(42)ELT548(Ker)

Judge : T.L. Viswanatha Iyer, J.

Appeal No. : O.P. No. 2638/89-L

Appellant : Indian Transformers Ltd.

Respondent : Cegat

Advocate for Def. : P.V. Madhavan Nambiar, Adv.

Advocate for Pet/Ap. : S. Parameswara, Adv.

Judgement :

T.L. Viswanatha Iyer, J.

1. Heard Sri. P.V. Madhavan Nambiar, Senior Standing Counsel for the Central Government who appears for the respondents on receipt of a copy of this original petition.

2. Against the order Ext. P-l which was confirmed in appeal by the order Ext. P-2 the petitioner has filed a second appeal before the first respondent Tribunal A copy of the appeal is Ext. P-3. The petitioner has moved an application for dispensing

with the prior deposit of the duty payable as per Ext. P-l, That was allowed conditionally by the order Ext. P-5. The petitioner was called upon to make payment of an amount of Rs. 50,000/- subject to which the pre-deposit of the balance demanded was to stand dispensed with. Petitioner has complied with the direction in Ext. P-5 and therefore the appeal is to be heard on its merits.

3. Petitioner submits that though they have complied with the order Ext. P-5, respondents 2 and 3 are demanding payment of the balance amount due as per Ext. P-1 on the allegation that Ext. P-5 is only an order waiving the deposit and not an order staying recovery of the balance amount due as per Ext, P-l.

4. I considered a similar matter, O.P. No. 1039 of 1989 wherein I held that waiver of deposit does not tantamount to stay of collection of the duty payable. However and having regard to the fact that the assessee was under the bonafide belief that it also operates as stay, I granted two months time to the assessee concerned in that case to apply to the Tribunal for stay and meanwhile stayed the collection of the amount demanded. The same procedure has to be followed in this case as well.

5. Accordingly I dispose of the original petition with a direction that respondents 2 and 3 shall not enforce the order Ext. P-l for a period of two months from today within which the petitioner may move the first respondent Tribunal for appropriate orders for stay of Ext. P-l.

The original petition is disposed of as above.

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