

Paradeep Phosphates Ltd. Vs. Commissioner, Central Excise and Customs and ors.

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Court : Kolkata

Decided On : Feb-18-2003

Reported in : 2003(87)ECC317,2003(156)ELT4(Cal)

Judge : Bhattacharya, J.

Appeal No. : W.P. No. 285 of 2003

Appellant : Paradeep Phosphates Ltd.

Respondent : Commissioner, Central Excise and Customs and ors.

Advocate for Def. : Sibdas Banerjee and ;A.K. Deb, Adv.

Advocate for Pet/Ap. : Bajoria, Adv.

Judgement :

Bhattacharya, J.

1. The Court : Since nobody appears on behalf of the respondents despite service of notice, this Court requested Mr. Sibdas Banerjee and Mr. A.K. Deb, who generally appear on behalf of the Respondent-Authorities, to appear in this matter. Mr. Banerjee and Mr. Deb agreed to appear in this matter on behalf of the Respondent-Authorities. A copy of this application has been served upon Mr. Deb

in Court. The Respondent-Department is directed to regularise the appointments of Mr. Banerjee and Mr. Deb in this matter.

2. By this application the petitioner has challenged an ex parte order dated December 18, 2002, passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata, directing the petitioner to deposit a sum of Rs. 50 lakh as a condition for the purpose of hearing of the Appeal before the Tribunal

3. After hearing Mr. Bajoria appearing on behalf of the petitioner and Mr. Banerjee appearing on behalf of the respondents, I find that in view of the Lawyers' Strike an application for adjournment was filed before the Tribunal, but the Tribunal rejected such application and thereafter, proceeded ex parte.

4. Mr. Bajoria on behalf of the petitioner submits that in the absence of the lawyer on behalf of the petitioner, an agreement between the President of India and the petitioner dated February 28, 2002 could not be placed before the Tribunal for the purpose of showing that the petitioner had got a very strong case on merit.

5. In view of the aforesaid fact, I allow this application, set aside the order passed by the Tribunal and direct the Tribunal to hear out the application afresh after giving an opportunity of hearing to the petitioner. However, for the inconvenience caused to the respondents, the petitioner must pay costs assessed at 300 Gms. to the Respondent-Authorities. Such costs must be deposited in the Personal Ledger Account of the Ministry of Law & Justice within a week from date. In default of payment of such costs within the period aforesaid, this writ application will stand dismissed.

6. I make it quite clear that I have not gone into the merit of the dispute and only the purpose of giving an opportunity to the petitioner to place the aforesaid Agreement I have set aside the order impugned.

7. Since this application has been disposed of before inviting affidavit from the respondents, the allegations as contained in this application on merit of the Appeal should not be treated to have been admitted by the respondents.

8. If the Receipt showing deposit of costs as directed above is placed before the Tribunal after a week from date, the Tribunal will fix a date for hearing at least after a fortnight thereof.
9. Let Affidavit of Service be kept with the record.
10. All parties concerned are to act on a xeroxed signed copy of this Dictated Order on the usual undertaking.

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