

Elque Polyesters Ltd. Vs. Cestat and ors.

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Court : Kolkata

Decided On : Jun-18-2004

Reported in : 2004(94)ECC577,2004(170)ELT404(Cal)

Judge : Bhattacharya, J.

Appeal No. : W.P. No. 1009 of 2004

Appellant : Elque Polyesters Ltd.

Respondent : Cestat and ors.

Advocate for Def. : Shibdas Banerjee, Sr. Adv. and ;Jayant Banerjee, Adv.

Advocate for Pet/Ap. : Samir Chakraborty, ;Hasmukh Kundalia and ;Vipul Kundalia, Advs.

Judgement :

Bhattacharya, J.

1. By this writ application, the writ-petitioner has challenged the order dated May 6, 2004 passed by the Customs, Excise & Service Tax Appellate Tribunal by which the said Tribunal had directed the petitioner to deposit Rs. 2 crore within 8 weeks from the date of the said order as condition precedent for hearing the Appeal on merit.

2. Being dissatisfied, the petitioner has come up with the instant writ application.
3. Dr. Chakraborty, the learned Counsel appearing on behalf of the petitioner, points out that in the order impugned the Tribunal has mentioned that the Appeal was fixed for a number of times and since huge amount of revenue is involved, the Tribunal observed that a party cannot get liberty to have adjournment after adjournment.
4. By pointing out the above observation, Dr. Chakraborty contends that although from the month of January, 2004 several dates were fixed, but on those dates the petitioner never prayed; for adjournment. But in view of the fact that the members of the Tribunal were not available, the matter could not be taken up. Dr. Chakraborty submits that the petitioner prayed for adjournment only on May 6, 2004 and prior to that, no adjournment was ever taken.
5. Dr. Chakraborty further submits that before passing any order on the question of deposit of the money, it is the duty of the Tribunal to consider the prima facie case of the petitioner and also the financial ability. But, it appears from the order impugned that those two factors were not at all considered by the Tribunal.
6. Although Mr. Banerjee appearing on behalf of the respondent-Authority has opposed this application; but the fact that in the past the petitioner did not ever apply for adjournment could not be disputed by the respondent-Authority. It is also apparent that in the order impugned the Tribunal did not indicate any reason as to whether it had considered the prima facie case or the financial capacity of the petitioner.
7. In view of the aforesaid fact, it is apparent that there was no appropriate hearing of the matter in accordance with law. The Tribunal did not follow the principles which were required to be followed while disposing of such application and at the same time was under the wrong impression that repeated adjournments were taken on behalf of the petitioner. I, thus, quash the aforesaid order and direct the Tribunal to reconsider the matter after taking into consideration in prima facie case and financial capability of the petitioner. The order must be passed by the Tribunal within one month from the date of communication of this order. The petitioner will

not pray for any further adjournment before the Tribunal. The writ application is, this, disposed of with the above directions. Since this application has been disposed of before inviting affidavit from the respondents, the allegations on the merit of the case should not be treated to have been admitted by the respondent-Authority.

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