

Collector of Customs Vs. Kishan Kumar Daga

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Court : Kolkata

Decided On : Feb-28-1994

Reported in : 1994(74)ELT575(Cal)

Judge : Suhas Chandra Sen and ;Arun Kumar Dutta, JJ.

Appeal No. : Matter No. 534 of 1994

Appellant : Collector of Customs

Respondent : Kishan Kumar Daga

Advocate for Def. : Bhaskar Sen, ;Dipak Deb, ;Hasmukh Kundalia and ;Minati Gomes, Adv.

Advocate for Pet/Ap. : S.K. Mitra, Adv.

Judgement :

ORDER

1. The matter is adjourned for a fortnight from date (15-3-1994). The adjudication proceeding has been delayed beyond all reasonable limits. The assessment of duty initially took place on 18-9-1992 for an associated value of Rs. 14,990.32 which was paid on that date. The show cause notice was issued on 18th March, 1993. The case of the writ petitioner is that they duly replied to the show-cause notice on the scheduled date of hearing i.e. 30th July, 1993. The Collector of Customs could not be found and the case was not heard. The writ petitioner

waited till January, 1994. Before moving this court the Collector of Customs did not find time to hear the case. Even then Ajoy Nath Ray, J. passed an order on 19-1-1994 to clear the goods on the basis of an undertaking to pay whatever duty they assessed in the adjudication proceeding given on behalf of the writ petitioner. But that was not done. Stay of the operation of that order was not obtained from the court. The Customs Authorities acted in clear violation of this order of the court. It has been stated that contempt rule has been issued.

2. Moreover, it has been stated that the Customs Authorities were at liberty to decide the case. The Customs Authorities till now has not taken any step in the matter.

3. In view of the aforesaid facts, I direct the Collector of Customs to complete the adjudication proceeding within seven days without fail. The writ petitioner must be given personal hearing before passing any order. The operation of the order under appeal, however, is stayed. The writ petitioner will be at liberty to remove the goods by furnishing the bank guarantee of the value of Rs. 15 lakhs. The bank guarantee must be furnished to the satisfaction of the Collector of Customs.

4. For gross delay and negligence the Collector of Customs must be penalized with costs. It has also been brought to our notice that the Customs Department has included the show cause notice in the paper book but has deliberately left out the reply to the show cause notice. This tactic is also to be discouraged. The appellants must pay costs assessed at Rs. 10,000/- immediately to the respondents within 72 hours failing which this order will stand vacated and this petition will stand dismissed.

5. All parties are to act on a signed copy of the minutes of this order on the usual undertaking.