

SUPREME COURT OF INDIA

Nitco Tiles Limited

Vs.

Gujarat Ceramic Floor Tiles Manufacturing Assn

C.A.Nos.1091-1093 of 2005

(C.K.Thakker and Ruma Pal and Arijit Pasayat JJ.)

09.02.2005

ORDER

1. Leave granted.

2. These appeals have been preferred from an interim order passed by the High Court of Gujarat on a writ petition filed by the respondent No. 1 initially, challenging the final finding of the designated authority on a New Shipper Review. Subsequent to the filing of the writ petition, the final finding of the designated authority was notified by the Central Government by Notification dated 28-7-2004. A second Notification was issued by the Central Government also dated 28-7-2004 rescinding an earlier Notification dated 1-7-2003 by which provisional assessment had been levied on the imports made from Nanhai and Prestige, being the respondents 10 and 11 herein. The writ petition was amended and the subsequent Notification dated 28th July, 2004 have also been challenged.

3. The High Court refused to accede to the preliminary objections raised by the Union of India that the respondent No. 1 should be relegated to the alternative remedy available to it under the Customs Tariff Act, 1985. The only ground for entertaining the writ petition given by the High Court was that "the question raised in this petition is not only important but also sensitive affecting the people of the country at large".

4. This is no reason at all, as the economic impact of every case of alleged dumping would necessarily affect the people of the country at large. If the reasons given by the High Court were to be accepted as a valid basis for exercise of its judicial discretion to entertain the writ petition in its extra ordinary jurisdiction under Article 226 of the Constitution, then the provisions for appeal against the orders passed by the designated authority in respect of anti-dumping issues would be rendered otiose and a person aggrieved by the final finding of the designated authority could, despite the express provision of Section 9C of the Customs Tariff Act, invoke the writ jurisdiction with impunity.

5. The High Court not only entertained the writ petition but also granted interim relief to the respondent No. 1 restraining, inter alia, the appellant and the other respondents from giving

effect to the Notification No. 81/2004, dated 28-7-2004 by which the earlier Notification imposing provisional antidumping duty has been rescinded and from given effect to the proviso inserted before the explanation in C.G. Notification No. 73/2003, dated 1-5-2003 by Notification No. 80/2004. The interim relief was granted for no discernible reason. Indeed the High Court said that no reasons were given in support of the interim relief because any observation made was likely to come in the way of the party at the stage of final relief.

6. It is well established that orders passed on interlocutory proceedings do not conclude the merits of the matter. We fail to see how observations made at an interim stage could come in the way of either of the parties at the final stage. It is also well established that an interim relief should, particularly when that order may be impugned before a higher authority, contain reasons however brief in support of the grant or refusal thereof. In the absence of such reasons, it is virtually impossible for such higher authority to determine what persuaded the grant or refusal of relief.

7. We are also aware of the well established principle that this Court normally does not interfere either with a Courts decision not to relegate a writ petitioner to an alternative remedy or with the grant of interim relief. It is unnecessary to cite any authority in support of this as the proposition cannot admit of any controversy. However, having regard to the singular lack of any acceptable reason in the impugned order we have no hesitation in interfering with this particular exercise of discretion by the High Court and set aside the same.

8. It may be mentioned that in related matters, in which there was also a challenge to the final finding of the Designated Authority and the identical Notifications, we had directed the matter be agitated before the CESTAT. Indeed the appeal is already pending before the CESTAT.

9. In the circumstances, we are of the view that the impugned order must necessarily be set aside but that the writ petition itself should be dismissed with liberty granted to the parties to respondent No. 1 to approach the CESTAT under provisions of Section 9C and to agitate all points raised in the writ petition before such Tribunal. Inasmuch as the proceedings have been conducted before an inappropriate forum and keeping in view the provisions of Section 14 of the Limitation Act, 1963 the period spent in prosecuting the writ petition should be condoned.

10. The civil appeals are accordingly disposed of with no order as to costs.