

SUPREME COURT OF INDIA

H and R Johnson (India) Limited

Vs.

Union of India

C.A.No.1090 of 2005

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

09.02.2005

JUDGMENT

Ruma Pal, J.

1. Leave granted.

2. The appellants are aggrieved by a Notification dated 23rd May, 2003 by which the Designated Authority under the Customs Tariff Act, 1985 initiated a new shipper review in respect of the foreign exporter (being the Respondent Nos. 4, 5 and 6 herein) for the period 1st July, 2002 and 23rd May, 2003. By the Notification dated 23rd May, 2003, the Designated Authority sought to review an earlier-Notification issued by the Central Government imposing anti-dumping duty on imports of rectified porcelain tiles from China and UAE. The Notification initiating the new shipper review was issued by the Central Government on 1st June, 2003. Both the Notifications one initiating the new shipper review the other dated 1st July, 2003 ordering provisional assessment were challenged by the appellants by way of a writ petition before the Bombay High Court. The Bombay High Court dismissed the writ petition by an order dated 2-12-2003 which is the subject matter of appeal before us.

3. While matter was pending before this Court, the Designated Authority completed the proceedings pursuant to the Notification dated 23rd May, 2003 by way of new shipper review and issued its final findings on 30 June, 2004. The final findings were notified by the Central Government on 28 July, 2004 being Notification No.80/2004. The earlier Notification issued on 1st July, 2003 ordering provisional assessment was rescinded by the Central Government by Notification No. 81/2004, dated 28 July, 2004. When these subsequent events were brought to this Court's notice, we were of the view that the appellants may ventilate their grievance against the impugned notifications and the final findings before the Central Excise and Services Tax Appellate Tribunal. The appellants have since filed an appeal before the Tribunal challenging the final findings of the Designated Authority as well as the Notification dated 28 July, 2004.

4. As far as the present appeal is concerned the submission was made by the Id. Solicitor General appearing on behalf of some of the respondents that this Court should relegate the appellants also to their alternative remedy available under the *Customs Tariff Act, 1985* to the Tribunal. The appellants objected to this on the ground that the High Court had made certain observations in dismissing the appellants' writ petition which would operate to the appellants prejudice and also on the ground that the Tribunal had not in fact been constituted in terms of Section 9C(5) of the Customs Tariff Act.

5. The matter was adjourned from time to time by this Court in order to enable the Union of India to clarify whether any President has been appointed of the Customs, Excise and Services Tax Appellate Tribunal (CESTAT) and if not, what steps had been taken to make such appointment.

6. Although several months have passed, admittedly, no President of the Tribunal has been appointed till today.

7. Learned Solicitor General appearing for the Union of India has submitted that the appointment has been cleared and would be made very shortly and that the delay has been caused for reasons beyond the control of the Union of India. Whatever the reason for the delay may be, it is clear that there is at present no President of the Tribunal.

8. It has been drawn to this Court's attention by the Id. Solicitor General that in terms of Section 129(5) of the Customs Act, the President of the Tribunal is expressly authorised to delegate his functions under the Act to the Vice-President of the Appellate Tribunal. By Notification dated 16-7-1999 the then President of the Tribunal [then known as the Customs, Excise and Gold (Control) Appellate Tribunal] in exercise of the powers conferred by Sec. 129(5) of the *Customs Act, 1962* delegated his power and functions qua President in his absence, whether on leave or otherwise to the senior most Vice-President to perform such of the functions of the President as might be necessary for the efficient functioning of the Tribunal. Therefore until the President is appointed it would be open to the Senior Vice-President to discharge the functions of the President. We are told that Benches have already been constituted for hearing appeals.

9. Since the Tribunal is already in seisin of the appeal filed by the appellant from the final findings on the new shipper review as well as the subsequent Notifications, no purpose will be served in keeping this appeal alive which only related to an interim stage of the new shipper review. It would in the circumstances be appropriate to allow the appellants to pursue the appeal before the Appellate Tribunal.

10. In the circumstances this appeal is disposed of by granting leave to the appellants to urge all the contentions raised in this appeal in the pending appeal before the CESTAT. CESTAT shall decide the matter without being influenced by the High Court's judgment dated 2-12-2003. CESTAT shall decide the matter as expeditiously as is conveniently possible and preferably by 31 May, 2005.