

**(2016) 05 P&H CK 0386**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CM Nos. 5423, 5031 and 4003 of 2016 in CWP No. 4800 of 2013

Kapsons Electro Stampings

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision:** May 6, 2016

**Citation:** (2016) 340 ELT 505

**Hon'ble Judges:** M. Jeyapaul and Raj Rahul Garg, JJ.

**Bench:** Division Bench

**Advocate:** S/Shri Sachin Jain and Deepak Gupta, Advocates, for the Petitioner; S/Shri Chetan Mittal, Asst. Solicitor General of India with Vivek Singla, Advocate, for the Respondent

**Final Decision:** Disposed Off

**Judgement**

@JUDGMENTTAG-ORDER

CM-5423-CWP-2016 :This application has been filed by Mr. Sachin Jain, Advocate in-person under Order 1 Rule 10 read with Section 151 CPC seeking permission to bring the actual and factual position to the knowledge of the Court as an Intervenor.

2. We thoroughly adverted to the entire pleadings found in the application and disclosed our considered view straightaway to the Advocate party in-person that there was no merit in the application as we have already been sufficiently posted all the actual and factual position by the concerned parties in the writ petition. Thereupon, Sh. Sachin Jain, Advocate in-person sought permission to withdraw the application.

3. Permission is granted. The application stood dismissed as withdrawn.

CM-5031-CWP-2016 & CM-4003-CWP-2016

4. CM-5031-CWP-2016 is an application filed by the petitioner M/s. Kapsons Electro Stampings under Articles 226 and 227 of the Constitution of India seeking direction to the respondents to appoint President and Vice-President of Customs, Excise and

Service Tax Appellate Tribunal (for short "CESTAT").

5. CM-4003-CWP-2016 is filed seeking direction to the respondents to appoint Member (Technical) in CESTAT Bench, Chandigarh.

6. We heard the elaborate submissions made by the counsel appearing for the petitioner as well as Mr. Chetan Mittal, Sr. Advocate, Asst. Solicitor General of India, appearing for the respondents-Union of India.

7. It is an admitted position that presently there is no President of CESTAT. There is also no Vice-President of the Tribunal to exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing. On account of non-appointment of the President and Vice-President of the above Tribunal, the judicial functioning of the Benches of the Tribunal in the entire country has come to grinding halt.

8. It is brought to our notice that Government of India, Ministry of Finance, Department of Revenue has issued an order dated 31-3-2016 declaring Sh. M.V. Ravindran, Member (Judicial), CESTAT as Head of the Department for the said Tribunal delegating the powers under Financial Powers Rules, 1978 till the appointment of regular President of the Tribunal or until further orders, whichever is earlier. But, it is found that the above delegation of powers is subject to the condition that no powers of transfer and posting of the Members of the Tribunal will be exercised by him as Head of the Department.

9. It was further brought to our notice the order passed by the Government of India, Ministry of Finance, Department of Revenue dated 29-4-2016 authorising Sh. M.V. Ravindran, Member (Judicial), CESTAT to prepare rosters for reassigning the Bench matters to the Members beyond 29-4-2016 till the joining of the new President or until further orders.

10. We noticed that the Bench of CESTAT at Chandigarh has started functioning from 1-12-2015. But, it appears that only a Single Bench of CESTAT is working since December, 2015. It was brought to our notice that about 9200 appeals are pending disposal before the CESTAT, Chandigarh. Out of which 9000 appeals have to be heard and decided by a Division Bench. If the Division Bench is not constituted in Chandigarh, the alarming pendency will become unmanageable. The litigants have fundamental right to have their litigations disposed of as expeditiously as possible. The above unhappy trend in Chandigarh Bench is found all over the country. Under such circumstances, we do not find any reason for the Government of India to delegate only the financial powers and the roster preparation work alone to Sh. M.V. Ravindran, Member (Judicial), CESTAT.

11. Extraordinary situation warrants extraordinary remedy under Articles 226 and 227 of the Constitution of India. Therefore, in the larger interest of public and litigants and also for smooth functioning of the Tribunal, Sh. M.V. Ravindran,

Member (Judicial), CESTAT shall exercise all the powers of the President to discharge administrative as well as judicial functions including transfer and posting for smooth functioning of the Tribunal in the entire country until a regular President is posted. Member (Technical) in CESTAT Bench, Chandigarh be posted within 15 days" time from the receipt of this order.

12. It is also brought to our notice that the Member [(Judicial)] of CESTAT Bench at Chandigarh who has been appointed in the month of December, 2015 itself has not been provided with any accommodation by Union Territory, Chandigarh. A Judicial Member is entitled to accommodation from Union Territory, Chandigarh by virtue of his office. Union Territory, Chandigarh is directed to allot accommodation to the Judicial Member of CESTAT Bench, Chandigarh within 15 days from the date of this order. These applications stand disposed of in the aforesaid terms.

13. The order be communicated to Sh. M.V. Ravindran, Member (Judicial), CESTAT and also to Union Territory, Chandigarh forthwith for strict compliance.

14. Copy of the order be given under the signature of the Court Secretary.