
(1983) 2 SCALE 920 : (1984) 1 SCC 242 Supp

Supreme Court of India

Case No: Civil Appeal No. 5618 of 1983 (arising out of SLP No. 8626 of 1983)

Jain Shudh Vanaspati
Ltd. and Another

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Sept. 30, 1983

Citation: (1983) 2 SCALE 920 : (1984) 1 SCC 242 Supp

Hon'ble Judges: D. A. Desai, J; A. N. Sen, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. With the consent of learned Counsel on either side we proceed to dispose of this matter finally.

2. This appeal is directed against an order dated May 23, 1983 by which interim stay granted in this case as well as in connected cases was vacated. To all intents and purposes this is thus an appeal against the refusal of interim relief by the High Court.

3. Mr. S.S. Ray, learned Counsel for the appellant contended that in identical matters interim stay has been granted on condition of the appellant furnishing bank guarantee for the amount involved in the dispute. Mr. K.G. Bhagat, Additional Solicitor General for the respondent pointed out that in another matter involving the same point this Court has vacated interim stay on condition that if the appellant succeeds in the case Union of India will refund the amount with interest at 18 per cent p.a. Having heard them and keeping in view the emphasis on precedent that this Court should follow its earlier orders, we fail to see how this bank guarantee helps either side. Mr. Ray said that Commission to the tune of Rs. 25/- lacs had to be paid to the Bank for giving guarantee. If this amount had been paid to revenue without prejudice to the contention in the event of success of the

appellant it could have been refunded with interest. Bank guarantee neither helps the revenue nor the assessee only banks reap the benefit. This trend in appropriate case is required to be reversed. Accordingly we are of the opinion that the appellant shall pay within six months from today 50% of the disputed duty and shall furnish Bank Guarantee for the balance of 50% of the disputed duty.

4. Mr. Ray says that the appellant has already given bank guarantee to the tune of 100% of the disputed duty. Therefore, the bank guarantee shall be kept alive till 50% of the disputed duty is paid. The Bank Guarantee for the balance of 50% of the disputed duty shall be kept alive till the disposal of the petition in the High Court.

5. If the petition in the High Court succeeds the respondent shall refund the duty recovered to the appellant within two months from the date of the decision of the High Court with interest at 18% p.a., but if the petition fails the appellant shall pay the remainder amount of duty which he would be liable to pay with 18% interest within two months from the date of the decision of the High Court. Credit shall be given for the amount which may be paid pursuant to this order.

6. This will be the interim order in the petition in the High Court and the appeal is allowed to the extent herein indicated with no order as to costs.