

(1997) 05 CAL CK 0001**Calcutta High Court****Case No:** Writ Petition No. 880 of 1997

Prashant Glass Works Pvt. Ltd.

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision: May 6, 1997**Citation:** (1997) 93 ELT 666**Hon'ble Judges:** Vinod Kumar Gupta, J**Bench:** Single Bench**Advocate:** Mitra, for the Appellant; N.C. Roy Chowdhury, for the Respondent**Judgement**

Vinod Kumar Gupta, J.

Show cause notice dated 27th February, 1997 issued by the Assistant Commissioner of Customs, the respondent No. 2 in this petition has been challenged by the petitioners on a number of grounds. When this petition was taken up for consideration today. Mr. N.C. Roy Chowdhury, Advocate appearing for the respondents brought it to the notice of this Court that in the meanwhile an order has been passed on 26th March, 1997 whereby the Commissioner of Customs while adjudicating upon the dispute between the parties forming the subject of this petition has passed a final order and that this order has in fact been communicated to the petitioners as well. Mr. Mitra learned Advocate appearing for the petitioner admits this fact but says that the court may permit the petitioners to incorporate the challenge to the aforesaid order dated 26th March, 1997 and in the meanwhile grant interim relief to the petitioners so that the confiscation of the goods by the respondents are released in favour of the petitioner by directing the petitioner to pay the difference in the duty on the basis of the price determined by the respondents, which payment, however, always remains subject to the final outcome and to direct the respondents to release other consignments by provisionally paying the duty on the basis of the value as assessed by the respondents.

2. The order passed by the Commissioner of Customs on 26th March, 1997 is the final adjudication order. The impugned show cause notice dated 27th February,

1997 has also merged in that order. The petitioner has an equally efficacious and alternative remedy of preferring an appeal against the adjudication order before the CEGAT. In the facts and circumstances of this case, I am not inclined to interfere with the impugned orders by exercising my extraordinary writ jurisdiction.

3. The petition is accordingly disposed of by giving liberty to the petitioner to avail of the alternative remedy of filing appeal before the CEGAT. It shall be open to the petitioner to pray for the grant of ad interim relief on the above mentioned terms before the CEGAT. If the petitioner asks for the interim relief on the aforesaid terms, it goes without saying that the learned Tribunal shall consider the petitioner's prayer and pass appropriate orders.

4. Since no affidavit-in-opposition has been filed by the respondents, allegations made in the petition shall not be deemed to have been admitted.

5. The application is disposed of.

6. There will be no order as to costs.

7. All parties to act on a signed xerox copy of this dictated order on the usual undertaking.