

(2010) 03 CAL CK 0025

Calcutta High Court

Case No: G.A. No. 1029 of 2010, A.P.O.T. No. 183 of 2010 and W.P. No. 222 of 2010

Indian Jute Mills Association

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: March 31, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8

Citation: (2010) 256 ELT 25

Hon'ble Judges: Sengupta, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Banerjee and Khaitan, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. There will be an order in terms of prayer (a) of the petition.
2. Instead of disposing of the application we propose to here out the appeal itself by treating the same as on day"s list.
3. This appeal is directed against an ad interim order passed by a learned Trial Judge on 8th March, 2010 whereby and whereunder the interim order was not granted. According to Mr. Banerjee the interim order in terms of prayer of the writ petition was prayed for at the time of hearing. However, such prayer was not granted. It appears to us that the writ petitioners challenge a notification issued under the Central Excise Act whereby and whereunder the importer of goods has been given certain concession and/or benefit for import of the jute goods from Bangladesh. The grievance of the writ petitioners is that they being the manufacturers of the same products are seriously affected by such notification granting exemption and /or concession. He submits that interim order should be passed as prayed for in the writ petition. However, at the time of argument Mr. Banerjee submits that for the time being those importers who have been benefitted should be asked to furnish bond in

favour of Central Government, to the extent of the amount received so that the revenue would be protected.

4. While considering his prayer we are of the view this importers are not made parties in the writ petition nor in the appeal. If any order is passed as suggested or as prayed for, the persons not before us would certainly be affected. Therefore, we think that the learned Trial Judge on that date was justified in not passing any interim order affecting the third party. However, that does not mean that a litigant in a fit case cannot be granted any interim relief and that can only be granted upon notice or making them parties in the proceedings.

5. We understand the predicament of the appellants/writ petitioners, as submitted by Mr. Banerjee, learned Sr. Advocate appearing with Mr. Khaitan, Sr. Advocate, as they do not know the names of the importer which is within the special knowledge of the respondent department concerned. Unless those persons are brought on record no effective relief can be granted. Even, we are afraid, without them the writ petition cannot be heard out effectively.

6. In this situation we feel prima facie that those persons are obviously necessary parties. Under such circumstances we ask the department concerned to supply the names of the importer who have already taken benefits of exemption in terms of the notification to the Advocate on record of Mr. Banerjee and on receipt of the same his client would be entitled to approach the learned Trial Judge, as may be advised. It seems to us that the subject matter of the writ petition is such that it has got some extent, public importance amongst limited class viz., jute manufacturers and/or importers. It would be proper to grant leave to the petitioner to advertise in the local newspapers under the provisions of Order 1 Rule 8 of the Code of Civil Procedure. Such insertion will be issued within a period of fortnight once in English daily and once in Hindi daily having wide circulation in national label, from the date of receipt of a copy of this order at the costs of the petitioner at the first instance. Over and above the department shall intimate to those importers who have taken benefits and/or exemption or who have already applied for at all, for such purpose.

7. In future any importer avails itself of benefit in terms of this notification the department shall intermittently communicate the names of such importer to the Advocate on record of the Appellant. Such information may be given with interval of one month from date of communication of this order or till the disposal of the writ petition whichever is earlier. However, after the advertisement is over and on receipt of the names of the importer it would be open for Mr. Banerjee's client to approach the Hon"ble Trial Judge for further interim relief as may be advised.

8. Thus the appeal is disposed of and so the connected application.

9. All undertakings are discharged.

10. Allegations contained in the writ petition are not admitted by the respondents since no affidavit has been called for.

11. All parties shall act on a xerox signed copy of this order on usual undertakings.