

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1682 OF 2009
[Arising out of SLP(Crl.) No. 9481/2008]

UNION OF INDIA AND ORS.

... APPELLANT(S)

:VERSUS:

SHEOJI PRASAD GUPTA

... RESPONDENT(S)

O R D E R

Leave granted.

Respondent appeared in-person. To assist this Court, we requested Mr. Vijay Hansaria, Senior Advocate to appear in this case as amicus curiae.

We have heard the learned Additional Solicitor General and Mr. Vijay Hansaria, learned amicus in this matter.

In our considered view, the High Court was not justified in exercising its extraordinary jurisdiction under Article 226 of the Constitution in the facts and circumstances of this case. Consequently, the impugned judgment of the High Court is set aside.

The learned Additional Solicitor General and Mr. Vijay Hansaria, learned amicus submit that in the facts and circumstances of this case, the proper course would be that an opportunity be given to the respondent Sheoji Prasad Gupta to file an appeal against the order dated 9.5.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Patna.

Accordingly, we allow the respondent Sheoji Prasad Gupta to file an appeal before the Customs, Excise & Service Tax Appellate Tribunal at Kolkata, against the order dated 9.5.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Patna, within six weeks from the date of this order.

If such an appeal is filed by the respondent within six weeks, the Tribunal is requested to decide the appeal on its merit. Delay in filing appeal, if any, be condoned. Considering the facts and circumstances of this case, the Tribunal shall not insist on pre-deposit for hearing of the appeal.

Since the matter has been pending for quite some time, we request the Tribunal at Kolkata to decide the matter within two months from the date of filing of the

appeal.

The appeal is disposed of with the aforementioned directions and observation.

We place on record our appreciation for the able assistance rendered by Mr. Vijay Hansaria, learned senior counsel appearing as an amicus curiae in this case at our request.

.....J
(DALVEER BHANDARI)

.....J
(Dr. MUKUNDAKAM SHARMA)

NEW DELHI,
AUGUST 27, 2009.



JUDGMENT