(1999) 12 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1053 of 1999

Bundelkhand Alloys Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:
Central Excises and Salt Act, 1944 — Section 3A
Constitution of India, 1950 — Article 226

Citation : (2000) 120 ELT 617

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Pankaj Bhatia, for the Appellant; J.M. Nagar, for the Respondent

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner is aggrieved by the omission of respondent No. 2 to redetermine the annual production capacity of the petitioner''s industrial unit in which it manufactures m/s ingots runner riser. The petitioner is also aggrieved of the action of the respondents in demanding the excise duty on the basis of the earlier determination which stands set aside by the appellate authority.

2. We have heard Shri Pankaj Bhatia, learned counsel for the petitioner and Shri J.M. Nagar, learned counsel for the respondents.

3. Section 3A of the Central Excise Act empowers the Central Government to charge excise duty on the basis of capacity of production in respect of the notified goods. In the case of the petitioner the Commissioner of Central Excise determined the annual production capacity of the petitioner''s factory at 9600 metric tonnes (provisionally). However, by a subsequent order the annual production capacity was finally fixed at 15680 metric tonnes. The petitioner preferred appeal against the said determination before the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi, which by order dated 5-5-1998 set aside the Commissioner''s order and directed him to re-determine the annual production capacity after giving the petitioner an opportunity of hearing. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bundelkhand-alloys-pvt-ltd-appellant...

Commissioner decided the matter again by order dated 7-11-1998 against which the petitioner again preferred appeal which was decided by the Tribunal vide order dated 18-3-1999. Once again the Tribunal set aside the Commissioner''s order and remanded the matter back to the Commissioner for re-determination of the annual production capacity of the petitioner''s unit. Since then the matter is pending before the Commissioner, and although the earlier determination made by the Commissioner is no longer in existence, the respondents are alleged to have been demanding excise duty on the basis of the said determination.

4. No counter affidavit was proposed to be filed and in the circumstances aforesaid, we dispose of this petition with the following directions:

(1) The respondent No. 1 is directed to determine the actual production capacity of the petitioner''s unit in compliance of the Tribunal''s order dated 18-3-1999 within a period of three months from the date of presentation of a certified copy of this order before him by the petitioner. The petitioner is directed to do so within a period of ten days from today.

(2) Till the determination of the actual production capacity of the petitioner''s unit as above, the respondents are restrained from demanding the excise duty from the petitioner in terms of any earlier determination made by the Commissioner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bundelkhand-alloys-pvt-ltd-appellant…