(1987) 02 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 27/86

Collector of Central Excise — APPELLANT

Vs

President, Customs, Excise and Gold (Control) Appellate Tribunal and Another — RESPONDENT

Date of Decision : 13-02-1987

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G(1), 35G(3)
Customs Act, 1962 — Section 129C(5)

Citation : (1987) 12 ECC 113 : (1987) 32 ELT 642

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—M/s. Lal Chand Anand and Sons, Ghaziabad are the manufactures of excisable goods falling under Tariff Item No. 68 under the provisions of the Central Excises and Salt Act, 1944. The Government of India issued a notification dated 18.6.1977 through which it exempted goods from payment of excise duty which fell under Tariff Item No. 68 up to the value of Rs. 30 lacs. The respondent-firm claimed full exemption contending that its capital investment on plant and machinery is below Rs. 10 lacs. The said firm got the exemption. Subsequently the proceedings started afresh by the excise department on the ground that the said respondent no. 2 got exemption which was not admissible. The proceedings were contested by the respondent No. 2. Ultimately the Assistant Collector, Central Excise decided the dispute against the respondent No. 2 vide its order dated 10.2.1983. Against the aforesaid order an appeal was filed.

2. Finding that some of the questions involved in the appeal were required reference to be made to the larger Bench, the Tribunal referred the same u/s 129C, Sub-section (5) of the Customs Act (sic) to the Larger Bench. Alongwith the appeal of the petitioner several other appeals involving the same point were

also referred to the Larger Bench. The Larger Bench answered this question by its order dated 7.6.1984. It was thereafter that the Collector, Central Excise moved an application u/s 35G(1) of the Act in the case of respondent No. 2 for making a reference. The reference application was rejected on the ground of not being maintainable on July 24, 1985. The Collector has thereafter moved the present application u/s 35G(3) of the Central Excise Act.

3. We have perused the reference application as well as the order annexed with the same. The respondent No. 2 has filed a copy of the order of the Tribunal dated 2.12.1986 finally disposing of the appeal in its favour which was preferred against the order of the Assistant Collector, Central Excise. By this order the appeal was allowed.

4. A question that arose before us was about the maintainability of the present reference application. It may be noted here that the reference application made by the petitioner u/s 35G(1) had been rejected on the ground of being not maintainable as it arose from an interim order. We are in agreement with that view and are of the opinion that the application u/s 35G(1) was rightly rejected by the Tribunal. On the facts and circumstances of the present case the said application was not maintainable. What the petitioner should have done was that after the case had been decided on merits by the Tribunal after the receipt of the question referred to, the Collector, Central Excise should have filed an application u/s 35G(1) for making a reference. This question which stood decided by the Tribunal by its final order dated 2.12.1986 the Collector while doing so also seeks reference in respect of the question which arose from the decision of the larger Bench and has a bearing on the decision of the appeal on 2.12.1986. This has not been done. Therefore, it appears that the present application u/s 35G(3) is misconceived and is liable to be dismissed on merits.

5. The application is dismissed.