(2009) 04 P&H CK 0278

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise APPELLANT

Vs

Laxmi Colour Lab RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 83

Citation : (2009) 16 STR 690

Hon'ble Judges : M.M. Kumar, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of S.T.A. Nos. 9, 10 and 11 of 2009, which have been filed by the revenue u/s 35G of Central Excise Act, 1944 (for brevity, ''the Act'') read with Section 83 of the Finance Act, 1994 (for brevity, ''the Finance Act''), challenging the order dated 23-3-2007 (P-3) and order dated 7-9-2007 (P-4) (2008) 12 STJ 68 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity ''the Tribunal'').

2. The Tribunal has found a lacuna in the order passed by the revi-sional authority that no opportunity of personal hearing was afforded to the respondent. Accordingly, the order of the revisional authority was set aside and the matter was remanded back to the revisional authority for passing the order afresh. Thereafter an application for rectification of order dated 23-3-2007 was filed, which has also been dismissed vide order dated 7-9-2007 (P-4).

3. The only argument raised by the counsel for the appellant, which was also the submission before the Tribunal in rectification application, is that u/s 84(5) of the Finance Act, the revisional authority, has passed the order within the period of two years from the date of the order passed by the adjudicating authority. According to the learned Counsel, the remand order would result into compelling the revisional authority to pass an order after the period of limitation of two years and, therefore, the remand order passed by the Appellate Tribunal is bad in

the eyes of law.

4. Having heard the counsel for the appellant, we find that the argument is baseless because the adjudicating authority has passed the order-in-original on 30-11-2004 whereas the revisional authority has revised that order on 28-11-2006 by exercising jurisdiction u/s 84(5) of the Finance Act. The order of the revisional authority is within the period of two years as it was passed on 28-11-2006. Once the initial order has been passed within a period of two years, the provisions of Section 84(5) of the Finance Act stands complied with. By virtue of exercise of power by the revisional authority within a period of two years the provisions of Section 84(5) of Finance Act has worked itself one. There is no further requirement of law that even on the remand as per the order of the Tribunal the period of limitation that was initially applicable would continue to apply. The argument is totally absurd and is thus liable to be rejected.

5. In view of the above, these appeals fail and the same are dismissed.