(2015) 05 AHC CK 0073

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No. 1511 of 2007

Commissioner of Central Excise APPELLANT

Vs

Yamuna Fan Industries RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35(G), 35-C(2)

Citation : (2015) 5 ADJ 226 : (2015) 322 ELT 61

Hon'ble Judges : Arun Tandon, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Subodh Kumar, Ashok Singh and Ashok Nigam, for the Appellant

Judgement

1. Nobody is present on behalf of the assessee even in the revised reading of the cause list. Heard Shri Ashok Singh, Advocate on behalf of the department.

Customs Excise & Gold (Control) Appellate Tribunal, New Delhi by means of the order dated 10.2.1997 decided the appeal filed by the assessee and allowed the same.

2. The department made an application seeking a reference on the alleged question of law specifically in the circumstance that there was another order to the contrary of the Tribunal dated 29.2.1996 passed in Appeal No. E/1791/94-NB.

3. While the said reference application was still pending, the department was advised to make an application seeking rectification. This rectification application was filed in November, 1998. The Rectification Application came to be dismissed under the order of the Tribunal dated 5.1.2001 on the ground that the two orders referred to by the department were independent orders and no mistake has crept in the order of the Tribunal.

4. The Reference Application came up for consideration before the Tribunal on 1.6.2001 and the Tribunal has passed the following order:

"The Department filed the ROM application after waiving its right to press the reference application. The reference application, therefore, does not survive for consideration and the same has to be dismissed as infructuous, and I do accordingly."

5. In order to keep the record straight it may be noticed that against the order of the Tribunal dated 1.6.2001, the department filed a Reference Application under Section 35(G) of the Central Excise Act (as was then applicable) before the High Court. This Reference Application was dismissed by the Division Bench of this Court on 23.7.2007 after observing that the proper remedy available to the petitioner was to file a writ petition against the order of the Tribunal rejecting the Reference Application as infructuous as the questions which are sought to be raised before the High Court do not arise from the order of the Tribunal rejecting the Reference Application as infructuous.

6. Accordingly, the department has filed this writ petition against the order of the Tribunal dated 1.6.2001.

7. Counsel for the department submits that the application for rectification under Section 35-C(2) of the Central Excise Act and that a Reference Application under Section35(G) of the Central Excise Act are two independent proceedings. Merely because the Rectification application had been rejected, it cannot be said that the Reference Application has become infructuous.

8. The considerations for deciding the Rectification Application and the Reference Application are entirely different which aspect of the matter has completely been ignored by the Tribunal while passing the order dated 1.6.2001.

9. In the facts of the case, we are of the considered opinion that there is substance in the contention raised on behalf of the department.

10. An application for rectification is made for the purposes of making corrections of the mistakes in the order of the Tribunal which are apparent. If such application is rejected by the Tribunal, it will not mean that the department has given up its right to seek reference of the question of law, which in the opinion of the department, arise from the order of the Tribunal.

11. The Tribunal was under an obligation to examine as to whether the question of law as sought to be referred to the High Court arise from the order of the Tribunal or not. The Reference Application could not have been dismissed as infructuous only because the rectification application has been dismissed as withdrawn. In the facts and circumstances of the case, we are of the opinion that the order of the Tribunal dated 1.6.2001 cannot be legally sustained. It is hereby quashed. The Reference Application is restored to its original number. The Tribunal shall consider the Reference Application afresh after affording opportunity of hearing to the parties concerned preferably within eight weeks of the receipt of this order.

Writ petition is allowed subject to the observations/direction made herein above.

