(2011) 07 AHC CK 0361

In the Allahabad High Court

Case No : Central Excise Reference Application Defective No. 6 of 2002

Commissioner of Central Excise, Kanpur APPELLANT

Vs

Ram Shree Steels Pvt. Ltd. RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO(2)

Citation : (2011) 274 ELT 30

Hon'ble Judges : Sunil Ambwani, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Pankaj Mithal, JJ.—We have heard Sri S.P. Kesharwani, learned counsel for the Department.

2. This Central Excise Reference Application was reported to be defective on 21-9-2002 when it was filed with the delay of one day. It was twice dismissed in default and was thereafter restored but still there is no application for condoning the delay. Apart from the fact that the delay condonation application has not been filed for about 9 years, we find that there is no merit in the reference application, in as much as, the tribunal has rightly held that the procedure prescribed under Rule 96ZO(2) of the Central Excise Rules, 1944 is directory/ technical in nature and substantial compliance of directory procedure has been held to be acceptable.

3. The Tribunal has relied upon several decisions for abatement of the claims on the ground that substantial benefits could not be denied on procedural delay. The abatement was claimed from 28-5-1998 to 29-8-1998. The intimations required under Rule 96ZO(2) read with Section 3A(3) regarding closure, and the condition (c) to the said rule regarding start of production again as well as condition (d) in respect of the balance and stock is given. The company manufactured M.S. ingots. It could not intimate the reading of the electricity meter to the Assistant

Commissioner of Central Excise as required under sub-rule (B) for the reason that in the meter room there was lock and key of the electricity department, and that the new meter was replaced in their factory on 29-8-1998 which is evident from the sealing certificate dated 29-8-1998 given by the Electricity Department and was accepted by the Tribunal.

4. There is nothing to show that under Rule 96ZO(2) all the five conditions have to be satisfied for claiming abatement. The procedural requirement of the rules may be dispensed with, if there is sufficient explanation and that is believed by the adjudicating authority. The words subject to fulfilment of the conditions cannot be read as subject to fulfilment of all the conditions. The Tribunal has rightly relied upon INDAL v. Thane Municipal Corporation - 1991 (55) E.L.T. 454 (S.C.) and held that non-observance of a procedural condition can be condoned if it is not likely to facilitate commission of fraud and introduce administrative inconvenience.

5. In the present case no fraud or commission of administrative inconvenience is alleged.

6. In our opinion no question of law arises for consideration. The appeal is barred by time. It also has no merits.

7. The reference application is accordingly rejected.

