(2016) 01 AHC CK 0287

In the Allahabad High Court

Case No : Central Excise Appeal No. 14 of 2012

Commissioner of Central Excise, Lucknow — APPELLANT

Vs

Shyam Traders — RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Citation : (2016) 333 ELT 389

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : S/Shri Rajesh Singh Chauhan and Anand Swaroop Rai, Counsels, for the Appellant; Shri Pankaj Bhatia, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and Sri Pankaj Bhatia who has put in appearance on behalf of the respondent.

2. This Central Excise Appeal under Section 35G of the Central Excise Act, 1944 arises out of an order dated 12th August, 2011 passed by Customs, Excise & Service Tax Appellate Tribunal [2012 (278) E.L.T. 468 (Tribunal)], whereby, the matter has been remanded back to the adjudicating authority for allowing the respondent to cross-examine the witnesses. From a perusal of the impugned judgment, we find that such a requirement of law being imperative as was held by this Court in a judgment reported in 2010 (260) E.L.T. 514 (All.), CCE, Meerut-I v. Parmarth Iron Pvt. Ltd. was appreciated and applied by the Tribunal in the facts and circumstances of the present case.

3. Learned counsel for the appellant does not dispute the position that the law laid down by this Court in the judgment mentioned above remains unsettled and the opportunity of cross-examining witnesses is available to the assessee.

4. In support of the contention based on the judgment referred to above, learned counsel for the respondent has further placed before us a judgment rendered by Hon?ble Apex Court in the case of Andaman Timber Industries v. Commissioner

of Central Excise, Kolkata-II reported in 2015 (324) E.L.T. 641 (S.C).

5. Referring to para 6 of the Apex Court judgment, it is submitted that the law laid down by this Court in the judgment already referred to herein above stands further fortified under the Apex Court judgment.

6. Learned counsel for the appellant is unable to place any judgment holding a contrary view on the proposition of law as has been relied by the learned counsel for the respondent as well as the law relied upon by the Appellate Tribunal in its judgment, sought to be impugned in the present appeal.

7. Once the position of law is settled and a contrary view is not put forth by learned counsel for the appellant in the present case, we are of the considered opinion that the judgment rendered by the Appellate Tribunal does not suffer from any illegality which may call for an interference under the appellate jurisdiction of this Court by virtue of Section 35G of the Central Excise Act, 1944.

8. In the result, the appeal fails and the impugned order passed by the Appellate Tribunal is hereby confirmed. It is open to the parties to appear before the adjudicating authority who shall proceed in accordance with law.

9. With the aforesaid observations, the appeal is dismissed.

