(2003) 01 MP CK 0143

In the Madhya Pradesh High Court

Case No : CER No. 5 of 2002

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Tirupati Steel Industries RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AA, 35H

Citation : (2005) 122 ECR 276 : (2005) 182 ELT 149

Hon'ble Judges : Shahi Kant Kulshreshtha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application u/s 35H of the Central Excise Act, 1944. The question which has been formulated by the department reads as under :-

"Whether the Tribunal, was correct in holding that an assessee would not be liable to pay interest u/s 11AA of the Central Excise Act, 1944, if the show cause notice did not propose levy of interest on duty, when liability for payment of interest u/s 11AA arises only if there is delay in payment of duty as confirmed in an adjudication order."

2. Upon perusal of the application and the facts which have been put forth vide Annx. A, we are of the considered opinion that the case at hand stands on a different footing we say so because on a perusal of the order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, in Appeal No. E/1063/02-NB/SM we find that the Member Judicial has expressed the view as under :-

"7. Ld. Counsel has, inter alia, submitted that the orders of the "lower authorities for levy of interest on the duty amount cannot be sustained in the absence of any proposal for such a levy in the show-cause notice. This submission has not been sought to be contested before me. I also note that the show-cause notice had not proposed to levy interest on duty. Therefore, I accept the Counsel''s plea and hold that the orders of the lower authorities are not sustainable in so far as they relate to levy of interest. The orders shall stand set aside to this limited extent only."

3. On a scrutiny of the aforesaid paragraph, it is clear as on day the department decided not to contest the issue. As there has been no joining of the issue, we are disposed to think a question of law really does not ensure warranting a command to the Appellate Tribunal to refer the question of law raised in this application.

4. The C. E. R. is, accordingly dismissed in limine.

