(2000) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : CERC No''s. 1 and 2 of 1999

Commissioner of Customs and Central Excise, Hyd. APPELLANT

Vs

Agrasen Syntex Private Ltd., Hyd. and others RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35
Central Sales Tax Act, 1956 — Section 9(2)

Citation : (2000) 2 ALD 645 : (2000) 121 ELT 583

Hon'ble Judges : P. Venkatarama Reddi, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : Mr. B. Adinarayana Rao, SC for Central Government, for the Appellant;

Judgement

P. Venkatarama Reddi, J.—In these applications u/s 35-G(3) of the Central Excise Act, the Revenue seeks reference of the following question of law framed by the learned Standing Counsel.

Whether the penalty provisions of the Central Excise Act, 1944 are applicable to the administration of Central Excise Duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 or not?

2. The Tribunal declined to refer the question to the High Court. The Tribunal followed the Division Bench decision of the Delhi High Court in Pioneer Silk Mills Private Limited v. Union of India, 1995(80) ELT 507, and held that in the absence of a specific provision for levy and collection of penalty under the provisions of Additional Duties of Excise (Goods of Special Importance) Act, 1957, the penalty provisions contained in the Central Excise Act cannot be read into the provisions of the former Act. The view taken by the Delhi High Court is fully supported by the decision of the Supreme Court in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, , wherein the Supreme Court held that despite Section 9 of the Central Sales Tax Act, in the absence of a specific provision creating the liability for penalty, the penalty cannot be levied under the CST Act by reading

the provisions of local Sales Tax Act. The ratio in Khemka''s case applies afortiori to the construction of the provisions of Additional Duties of Excise Act wherein it is laid down that the provisions of the Central Excise Act shall as far as may be, apply in relation to the "levy and collection of additional duty". The levy and collection of penalty cannot be said to be comprehended within the scope of the said expression "levy and collection of additional duty". There is nothing in M/s. Ujagar Prints v. Union of India, 1988 (38) ELT 535, relied upon by the learned Standing Counsel for Central Government, which runs counter to the view taken in Khemka''s case. In the said case, the Supreme Court was not concerned with the question of levy of penalty. The decision in Ujagar Prints case was referred to by Delhi High Court and rightly distinguished.

3. In view of the settled legal position, we are of the view that no arguable question of law arises, which needs to be answered by this Court. Hence, the reference applications are dismissed.

