

---

**(1994) 02 MAD CK 0074**

**In the Madras High Court**

**Case No :** W.A. No. 226 of 1994 & Writ Appeal No. 226 of 1994

Indian Steel Rolling Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

---

**Date of Decision :** 15-02-1994

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 35B

**Citation :** (1994) 71 ELT 350

**Hon'ble Judges :** K.A. Swami, C.J.;Somasundaram, J

**Bench :** Division Bench

**Advocate :** Shri K. Ramachandran, for the Appellant; Shri K. Jayachandran, ACGSC, for the Respondent

---

## **Judgement**

K.A. Swami, C.J.—This appeal is preferred against the order dated 24-1-1994 passed by the learned single Judge in writ petition 1116 of 1994. Learned single Judge has rejected the writ petition on the ground that the petitioner can avail the alternative remedy of appeal, which is adequate, efficacious and effective.

2. In the writ petition, the petitioner/appellant sought for a declaration that the final products, viz., bars and rods of iron non-alloy steel as specified in serial number 2 under column 3 of the Table annexed to the Notification No. 202/88, dated 20-5-1988 mean and include "bars and rods of iron, non-alloy, steel twisted after rolling" in terms of Chapter Note 1(m) of Chapter of the Central Excise Tariff Act, 1985 and such other orders as are deemed fit under the circumstances of the case.

3. There is an order of adjudication made against the appellant. That order was appealed before the Collector of Central Excise (Appeals) in A. No. 69/93(M) & 76/93(M). The Collector of Central Excise (Appeals) by the order dated 28th September, 1993 has dismissed the appeal, upholding the order of the Lower Authority. The aforesaid order of the Collector of Central Excise is appealable. u/s 35B of the Central Excises and Salt Act, 1944, an appeal lies to the Appellate Tribunal as named in the Act. In the appeal, the appellant is entitled to urge

question of fact and law.

4. It is contended by learned counsel for the appellant that the aforesaid appeal is not effective and efficacious and is also not adequate. It is not the case of the appellant that the relief sought for in the writ petition cannot at all be obtained in the appeal. The case of the appellant as contended before us, depends upon the interpretation of entry at serial 2 in column 3 of the table annexed to the Notification 202/88, dated 20th May, 1988. It is also contended that thereafter, some more notifications are issued, having a bearing on the aforesaid Notification 202 of 1988.

5. When the appeal lies on facts and law and the Appellate Authority is also entitled to take into account the subsequent events that take place during the pendency of or subsequent to the order challenged in the appeal, we are of the view that the alternative remedy of appeal cannot at all be considered to be either inadequate or inefficacious. In fact, the Appellate Tribunal has been specifically created in order to ensure that such matters are specifically dealt with and there is speedy and effective disposal of such matters, therefore it would be in the interest of the appellant to avail the remedy of appeal.

6. However, it is contended by learned counsel for the respondents that the appeal ought to have been filed long back in the year 1993 itself, now it cannot be entertained, as it would be barred by time.

7. The order of the Collector is dated 28th September, 1993 and service has been effected subsequent thereto. The period of limitation is 90 days from the date of service and there is a provision empowering the Tribunal to condone the delay upto 90 days and as the writ petition has been filed on 20-1-1994, we are of the view that there would be no injustice caused to the respondents, if the appellant is permitted to file an appeal, within a specified period and the Appellate Tribunal to proceed to decide it on merits and in accordance with law, because it cannot be said, as on the date the writ petition was filed, the appeal was barred by time.

8. For the reasons stated above, the writ appeal is disposed of in the following terms :-

This is not a case, in which the exercise of jurisdiction under Article 226 is called for. However, liberty is reserved to the appellant to prefer an appeal, within 30 days from today against the order dated 28th September, 1993 passed by the Collector of Central Excise (Appeals) before the Appellate Tribunal. If such an appeal is preferred, the Appellate Tribunal shall decide the appeal, on merits and in accordance with law, without going into the period of limitation. The order of the learned single Judge stands modified accordingly. There will be no order as to costs.