(2009) 09 BOM CK 0185

In the Bombay High Court

Case No : Writ Petition No. 3757 of 2009

Indoworth (India) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-09-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 129A

Citation : (2010) 254 ELT 62

Hon'ble Judges : P.D. Kode, J;A.P. Lavande, J

Bench : Division Bench

Advocate : Deo, for the Appellant; S.K. Mishra, ASG, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Deo, learned Counsel for the petitioners.

2. By this petition, the petitioners challenge the order dated 25-8-2009 by which the order of provisional assessment was passed by the Commissioner, Customs and Excise. According to Mr. Deo, learned Counsel for the petitioners by the impugned order the petitioners have been called upon to deposit 50% of the differential value i.e. Rs. 1,25,21,129/- which is contrary to the Regulation 2 under which at the time of passing of the order of provisional assessment the assessee can be asked to deposit only 20% amount assessed. The learned Counsel, therefore, submits that the writ petition filed against the said order is maintainable. Mr. Deo further submits that the CEGAT, South Zonal, Madras in Shanti Alloys Pvt. Ltd. v. Commissioner of Customs, Bangalore 2000 (123) E.L.T. 643 has taken a view that against the order for provisional assessment no appeal lies u/s 129A of the Customs Act, 1962 and, therefore, the petition filed is maintainable.

3. Per contra, Mr. S.K. Mishra, learned Assistant Solicitor General submits that the petitioners have effective alternative remedy by way of appeal to the Tribunal

u/s 129A of the Customs Act, 1962 and, therefore, the petition ought not to be entertained. Learned Counsel relies upon the Judgment of the Madras High Court in the case of Nivaram Pharma Pvt. Ltd. Vs. The customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, The Commissioner of Central Excise (Appeals) and The Assistant Commissioner of Central Excise, Madras IV Division, in which Madras High Court has held that in the tax matter there should be no short circuiting of statutory remedies of appeal, revision etc. and when there is alternative remedy u/s 35G of Central Excise Act, 1944 available, High Court ought not to have entertained the writ petition.

4. Having considered the rival contentions of the parties and having perused the record, we are of the considered opinion that the objection taken by the respondents is well merited. Against the impugned order passed by the Commissioner dated 25-8-2009 as submitted by Mr. Mishra, appeal u/s 129A of the Act is maintainable. The petitioners are entitled to urge all grounds including breach of Regulation 2 in Appeal that may be preferred by the petitioners against the impugned order. In our considered opinion, the petitioners have effective and efficacious remedy against the impugned order and, therefore, we do not think this is a fit case to exercise extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5. In the result, therefore, we are not inclined to interfere with the impugned order. The petitioners are at liberty to avail alternative remedy u/s 129A of the Customs Act. Needless to mention that in case the petitioner choose to avail alternative remedy u/s 129A the Tribunal shall decide the matter on its own merits. Petition is, therefore, rejected.

