(2014) 02 AHC CK 0002

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 13 of 2014

J.C. Rolling Mill Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35B, 37C, 37C(1)

Citation : (2015) 316 ELT 593

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Siddharth Singhal, Counsel, Advocates for the Appellant; B.K.S. Raghuvanshi, Counsel, Advocates for the Respondent

Judgement

1. The appeal by the assessee is against an order of the Customs, Excise & Service Tax Appellate Tribunal, dated 26 September, 2013. The Tribunal dismissed an appeal filed by the assessee against an appellate order of the Commissioner of Central Excise (Appeals) in default in the following terms:--

"Today when this matter was called none (sic) representing the appellant appeared for the hearing, even though the notice for hearing had been sent in time on 20-8-2013. There is no request received for adjournment. On earlier occasions above when this matter had been listed, none had appeared and one of the notice has been returned undelivered with remarks of postal authority as "Not Known". It appears that the appellant has changed (sic) his address without intimating the Tribunal about the change of address for the purpose of correspondence. This conduct of the appellant indicates that they are not interested in (sic) pursuing this appeal. Accordingly the appeal is dismissed for non-prosecution."

The assessee has raised the following questions of law:--

"(A) Whether the Tribunal failed to exercise the jurisdiction vested in it by not considering the provision of Section 37C of the Central Excise Act, 1944 before recording the conclusion about the date of service of order upon the appellant?

(B) Whether the Tribunal failed to exercise the jurisdiction vested in it under Section 35B by not considering and deciding the appeal of the appellants on merits?

(C) Whether even otherwise the demand of penalty is wholly excessive, arbitrary and unreasonable?"

2. Section 37C(1) of the Central Excise Act, 1944 (hereinafter referred to as the ''Act'') provides as follows:--

"37C. Service of decisions, orders, summons, etc.--(1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served,--

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due, to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof, to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended.

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice."

3. In the present case, as the order of the Tribunal itself would indicate, the notice which was remitted to the assessee was returned undelivered with remarks of postal authority as "Not Known". From this, the Tribunal inferred that the appellant has changed its address without an intimation to the Tribunal and consequently the appellant appeared to be not interested in pursuing the appeal. As a matter of fact, the order of the Tribunal, as was urged before the Court, was served on the same address. The provisions of Section 37C(1) of the Act were clearly not followed and we find merit in the contention advanced by learned counsel for the appellant that there was no valid service upon the appellant.

4. Since, on the admitted facts as they stand, it is clear that there was no valid service on the assessee, it is not necessary for the Court to relegate the assessee to the remedy provided under the Central Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

5. We, accordingly, answer the first question as framed in the affirmative and in favour of the assessee. In the circumstances, it is not necessary for the Court to answer questions B and C.

6. The appeal shall, accordingly, stand disposed of in the aforesaid terms. As a result of the aforesaid judgment, learned counsel appearing for the assessee states that the assessee shall appear before the Tribunal on 17 February, 2014 together with a certified copy of this order so that consequential directions for the listing of the appeal can be passed.