(1998) 09 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5120 of 1987 and Civil Miscellaneous No. 20673 of 1998

Jullundur Engineering Company APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 29-09-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 67 ECC 365 : (1999) 121 PLR 543 : (1999) 1 RCR(Civil) 507

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : A. Mohanta, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this application, prayer made is to dismiss the writ petition as being not maintainable because the petitioner has not exhausted the alternative remedy of appeal provided under the Central Excise and Customs Act

2. Notice of the application was given to the counsel for the petitioner, but no one has put in appearance.

3. It is contended that vide Show Cause Notice dated 24.2.1987, Annexure P-6, petitioner was called upon to show cause to the Assistant Collector, Central Excise, Jalandhar, as to why the Kit Boxes Steel (Iron Trunk) and Bins Steel portable be not classified under sub-heading 8312.90 attracting duty at the rate of 20% ad valorem. Petitioner submitted reply to the above said show cause notice.

4. After considering the reply, the Assistant Collector vide order dated 31.3.1987 ordered that the Kit Boxes Steel (Iron Trunks) and Bins Steel portable be classified under sub-heading 8312.90 of schedule to the Central Excise Tariff Act, 1985 (5 of 1986) attracting Central Excise Duty at the rate of 20% ad valorem. In pursuance of the order dated 31.3.1987, the Assistant Collector, Central

Excise, Jalandhar, issued a Demand Show Cause Notice dated 3.7.1987, Annexure P-9, instead of taking the matter in appeal to the Collector (Appeals) Central Excise, New Delhi, in Form EA-1, petitioner has filed the present writ petition. In my view, the writ petition is premature as the petitioner has not exhausted the alternative remedy under the Central Excise and Customs Act. In this regard, reference may be made to Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, and State of Goa and others Vs. Leukoplast (India) Ltd. etc., . Consequently, writ petition shall stand dismissed being premature. The petitioner, however, would be at liberty to raise all the issues taken in the writ petition in appeal before the appellate authority.