
(2003) 05 AHC CK 0159
In the Allahabad High Court
Case No : Writ Petition No. 2624 of 2002

Kamrup Industrial Gases Limited

APPELLANT

Vs

CEGAT and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (2003) 89 ECC 370 : (2004) 172 ELT 454

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : A.P. Mathur, for the Appellant; B.N. Singh, Senior Standing Counsel, A.K. Srivastava, Addl. S.C., for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This writ petition has been filed for quashing the order dated 2.8.2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, respondent No. 1.

2. The petitioner is engaged in the manufacture of goods falling under Chapters 28, 29 and 84 of the Central Excise Tariff Act, 1985. It appears that the petitioner approached the Tribunal against the order passed by the Commissioner (Appeals) Allahabad. u/s 35F of the Central Excise Act, the petitioner applied for grant of waiver to deposit the disputed amount of duty as a condition for hearing of the appeal. The Tribunal by order dated 14th December 1998 directed the petitioner to deposit rupees one lac as against the demanded duty on or before 31st January 1999. Subject to compliance the balance amount was dispensed with and recovery proceedings were stayed during the pendency of appeal. The petitioner failed to deposit the aforesaid amount of rupees one lac on or before 31st January 1999. The Tribunal by order dated 16.2.1999 dismissed the petitioner's appeal for non-compliance of the provisions of Section 35F of the Central Excise Act. It appears that the petitioner had also filed another appeal raising the same controversy before the Tribunal. The Tribunal allowed the said

appeal, as a result the amount deposited by the petitioner in another appeal became refundable. The department instead of refunding the said amount to the petitioner adjusted the same towards the outstanding dues, which was the subject-matter of present appeal, which was dismissed by the Tribunal by order dated 16th December 1999.

3. The petitioner thereafter filed an application for restoration of the above appeal on the ground that since now the duty has been realized by the department by way of adjustment, the condition of Section 35F stands complied with and appeal may be heard and decided on merits. The said application was filed on 17th May 2001 and was dismissed by the Tribunal by Misc. Order No. 10/01-C. The application was dismissed on the ground that there was no material before the Tribunal to show that any amount was deposited earlier when it became refundable.

4. Thereafter the petitioner filed second application for restoration of the appeal annexing therewith certain documents evidencing that the duty which was the subject-matter of appeal has been refunded by the department by way of adjustment and contended that now the provisions of Section 35F of the Act, have been complied with and requested the Tribunal to hear the appeal on merits. The Tribunal by the impugned order dismissed the second restoration application holding that this amounts to review the earlier order and secondly in absence of vital documents i.e. the order showing that the amount which became refundable was adjusted towards the amount which ought to have been deposited in pursuance to the stay order dated 14.12.1998. Aggrieved against this very order present writ petition has been filed.

5. Heard Shri A.P. Mathur, learned counsel for the petitioner and Shri Anoop Kumar Srivastava, learned Standing Counsel for the Union of India.

6. The learned counsel for the petitioner argued that in any view of the matter the position as stand today and not even disputed in the counter affidavit the department has recovered a sum of rupees one lac by way of adjustment, the Tribunal should hear and decide the appeal on merits. According to him condition of Section 35F of the Act stands satisfied and there is no legal bar for rehearing of the appeal. On the other hand it was submitted by the learned Standing Counsel for Union of India that the petitioner was required to comply with the condition of stay order within certain time. Admittedly the petitioner has failed to comply with the conditions of the stay order within time granted by the Tribunal. Now the question of re-hearing of the appeal does not arise. He further submitted that earlier orders have not been challenged in the present writ petition and, as such, this Court should not issue a writ.

7. The argument made by learned counsel for the petitioner is too wide. If the argument of learned counsel for the petitioner is accepted then in every case whenever demand is realized the appeal filed by the assessee would be revived notwithstanding the earlier dismissal order of the appeal. This is not the intention

of the Legislature.

8. A construction, which reduces the statute to a futility, has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *litres magis valeat quam pareat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties (See Broom's Legal Maxims (10th Edn) Page 361 Craies on Statutes (7th Edn) Page 95 and Maxwell on Statutes (11th Edn Page 221).

9. A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable (See. *Whitney v. IRC*, AC at Page 52 referred to in *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, and *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab*,

10. The Courts will have to reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used (See *Salmon v. Duncombe* AC at Page 634 *Curtis v. Stovin* 60 LT 772 (CA) referred to in *S. Teja Singh* case).

11. If the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, Court should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Don Caster Amalgamated Collieries* (1940) 3 All ER 549) referred to in *Pye v. Minister for Lands for NSW* (1954) 3 All ER 514. The principles indicated in the said cases were reiterated in *Mohan Kumar Singhania v. Union of India* .

12. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

13. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs (See *R.S. Raghunath Vs. State of Karnataka* and another, Such a construction has the merits of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head on clash between two sections of the same Act (See *Sultana Begum Vs. Prem Chand Jain*,

14. Whenever it is possible to do so it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be tightly assumed that Parliament had given with one hand what it took away with the other.

15. The provisions of one section of the statute cannot be used to defeat those of

another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless number" or "dead letter" is not a harmonized construction. To harmonise is not to destroy.

16. The petitioner did apply for grant of waiver of the condition to deposit the amount. The petitioner obtained conditional order from the Tribunal. The petitioner has failed to comply with the said conditions of the Tribunal. Now after a lapse of period of more than two years it is not open to the petitioner to urge that since the demand has been recovered, the appeal should be heard and decided on merits. I do not find any error in the impugned order of the Tribunal. The writ petition fails and is accordingly dismissed.