(1997) 03 AHC CK 0199

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 196 of 1997

Kanoria Chemicals and Industries Ltd. APPELLANT

Vs

CEGAT RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35C, 35G

Citation : (1997) 70 ECR 236 : (1997) 93 ELT 665

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner prays for writ of certiorari quashing the order dated 6-12-1996 passed by Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, Respondent No. 1.

2. The petitioners are engaged in manufacture of pesticidies/insecticides registered under the Central Excise Department. They were served with a show cause notice dated 9-8-1994 alleging that they had cleared the pre-budget stock of pesticides/insecticides without payment of duty during the period 1-3-1994 to 28-5-1994. The petitioners submitted reply stating that they had manufactured goods prior to 1-3-1994 and at that time there was no Central Excise Duty levelled on the same. The Assistant Collector (now designated as Assistant (Commissioner) adjudicated the case and confirmed the payment of duty of Rs. 11,94,200/- and also imposed a penalty of Rs. 5,000/- on the petitioners.

3. The petitioners filed appeal before the Collector (Appeals) now designated as Commissioner (Appeals), Allahabad. The appeal was dismissed on 12-1-1996. The petitioners further filed appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. The appeal has been dismissed on 6-12-1996. The petitioners have challenged this order in this writ petition.

4. The main contention of the learned counsel for the petitioners is that the

goods were manufactured prior to 1-3-1994 and at that time there was no central excise duty leviable on the same. The goods were sold to various customers after the said date but the tax is on manufacture and not on the sale.

5. An objection has been raised on behalf of learned counsel for respondents that the petitioners have alternative remedy to move an application for reference to this Court u/s 35G of the Central Excise and Salt Act, 1944 which reads as under :-

"The Commissioner of Central Excise or the other party may, within sixty days of the date upon which he is served with notice of an order u/s 35C (not being an order relating, among other thing, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purpose of assessment, by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days."

6. From the perusal of the said provision it is clear that except where the question involves determination of the question in relation to the rate of duty of excise or to the value of goods for the purposes of assessment, the application may not be maintainable, but where none of these questions are involved, the assessee has a right to make an application for reference to the High Court under the aforesaid Section. The contention of the petitioners is that the goods have been manufactured prior to 1-3-1994 and the tax was not leviable on such goods. Respondent No. 1 has taken the view that notwithstanding the date of manufacture of the goods, the tax is liable to be paid on the goods manufactured by the petitioners to be sold after the said date. Respondent No. 1 has categorically recorded this finding :-

"We hold that duty shall be payable on the goods manufactured prior to 1-3-1994 but cleared on or after 1-3-1994."

7. In view of the above discussion the petitioner has alternative remedy. The writ petition is accordingly dismissed.

