(2001) 04 AP CK 0049

In the Andhra Pradesh High Court

Case No : CERC No. 9 of 2000

KVR Forgings Limited — APPELLANT

Vs

Commissioner of Central Excise — RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 69
Central Excise Rules, 1944 — Rule 218(1)
Central Excises and Salt Act, 1944 — Section 35

Citation : (2001) 3 ALD 528 : (2001) 3 ALT 628 : (2001) 132 ELT 588

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Mr. A. Sanjay Kishore, for the Appellant; Standing Counsel for Central Government, for the Respondent

Judgement

S.R. Nayak, J.—Perused the office note. The opinion of the Registry that as per Section 69 of the A.P. Court Fees and Suits Valuation Act 1956, the Court fee of Rs.200/- should have been collected only by way of stamps is untenable.

2. No doubt Section 69 of the A.P. Court Fees and Suits Valuation Act provides that all fees chargeable under this Act shall be collected in stamps. But the Court fee paid by the appellant in this case is not under the provisions of the A.P Court fees and Suits Valuation Act, but it is in terms of Section 35-H of the Central Excise Act, 1944 read with Rule 218(1) of the Central Excise Rules and Form EA 6.

3. Sub-section (1) of Section 35-H of the Central Excise Act provides that:

The Commissioner of Central Excise or the other party, may, within one hundred and eighty days of the date upon which he is served with notice of an order" u/s 35-C passed on or after the 1st day of July, 1999 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes 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, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal"

4. Rule 218 (1) of the Central Excise Rules, 1944 provides that:

"An application under sub-section (1) of Section 35-H requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No.EA6 and such application shall be filed in quadruplicate.

5. Note 3 to Form No. EA 6 framed under Rule 218(1) of the Central Excise Rules provides that:

"The fee of Rs.200/- required to be paid under the provisions of the Act shall be through a crossed bank draft drawn in favour of the Registrar of the High Court on a branch of any nationalised bank located at the place where the High Court is situated and the demand draft shall be attached to the form of application."

6. The language employed in note-3 is in mandatory form. In other words, as per the note the Court fee of Rs.200/- is required to be paid only through a crossed bank draft, that is what the petitioner has done in the instant case. The demand draft is in favour of the Registrar of the High Court drawn on Andhra Bank, Jubilee Hills Branch, Hyderabad. There is a lapse on the part of the Registry in encashing the demand draft and crediting the same towards the Court fee. By this time the validity of the demand draft has expired. However, the learned Counsel for the petitioner fairly submitted that his client would revalidate and submit a fresh demand draft if the Court may so direct.

7. In that view of the matter, while rejecting the stand of the Registry that the Court fee should have been paid only by way of stamps, but not in the form of demand draft, we direct the petitioner to submit a fresh demand draft for a sum of Rs.200/- or to revalidate the demand draft dated 1-6-2000 already submitted as required under note-3 of Form EA 6 within a period of one week from today. The Registry is directed to handover the demand draft to the learned Counsel for the petitioner forthwith.

