(1984) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 451 of 1984

L.H. Sugar Factories Limited and Another — APPELANT

Vs

The Collector, Central Excise and Others — RESPONDENT

Date of Decision : 25-09-1984

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

Citation : (1985) 5 ECC 308

Hon'ble Judges : N.D. Ojha, J;Anshuman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—The petitioners submitted a rebate claim on 6th November, 1975 on the basis of a notification dated 12th October, 1974 for a sum of Rs. 2,43,140. The claim was entertained and rebate in the sum of Rs. 2,34,904.45 was allowed. The petitioners however submitted a revised consolidated rebate claim for Rs. 7,28,683.81 and after adjusting the amount of Rs. 2,34,904.45, rebate in respect of which had already been allowed, the balance came to Rs. 4,93,779.36. The claim of rebate for this amount was disallowed by the Assistant Collector. The petitioners preferred an appeal against the order of the Assistant Collector before the Collector, Central Excise. This appeal was allowed by the Collector (Appeals), Central Excise, New Delhi, by his order dated 10th October, 1983 and the Assistant Collector was directed to recalculate the amount of rebate admissible to the petitioners and sanction the same within a period of three months of the receipt of his order. The matter was not decided by the Assistant Collector within the period of three months mentioned in the order of remand and the petitioners instituted this writ petition not with the prayer for issue of a writ of mandamus directing the Assistant Collector to decide the matter, but with the prayer that a writ of mandamus may be issued directing the respondent to allow a sum of Rs. 4,93,779.36 along with interest as rebate. A counter-affidavit was filed in the writ petition bringing it to the notice of this Court that the

Assistant Collector has decided the matter by his order dated 4th August, 1984, in pursuance of the order passed by the Collector (Appeals) Central Excise. Thereafter the petitioners made an application for amendment of the writ petition by which a relief for quashing the order dated 4th August, 1984, passed by the Assistant Collector is sought to be added.

2. It has been urged by counsel for the petitioners that the order of the Assistant Collector dated 4th August, 1984 is in the teeth of the order of remand passed by the Collector (Appeals), Central Excise, as also of the order of the Tribunal dated 21st September, 1983, in an appeal filed by M/s. Dhampur Sugar Mills. We are not expressing any opinion on the merits of the submission made by counsel for the petitioner inasmuch as we are of opinion that even if the submission made by counsel for the petitioners be correct this plea can be raised by the petitioners in appeal which is maintainable against the order of the Assistant Collector u/s 35 of the Central Excises and Salt Act. The power of the appellate authority is very wide.

3. In this connection it has been urged by the counsel for the petitioners that the principle for allowing rebate has already been laid down by the Tribunal in the case of M/s. Dhampur Sugar Mills mentioned above and that the calculation of the amount which the petitioners were claiming as rebate was not disputed by the respondents. If that be so the appellate authority can itself pass an order allowing the rebate. Even if this writ petition is admitted and ultimately allowed this Court will itself not grant rebate but will only require any of excise authorities, either the Assistant Collector or the Collector, to consider the application for rebate in accordance with law.

4. For the above reasons we are not inclined to allow the application for amendment seeking to quash the order passed by the Assistant Collector on 4th August, 1984, i.e., during the pendency of the present writ petition.

5. As regards the relief claimed in the writ petition as instituted, suffice it to say that this relief can be pressed by the petitioners before the appellate authority in the appeal which they may file against the order of the Assistant Collector dated 4th August, 1984, mentioned above.

6. For the foregoing reasons this writ petition fails and is dismissed. A copy of this order may be supplied to counsel for the petitioner on payment of usual charges within three days.

