(1996) 11 SC CK 0187

In the Supreme Court Of India

Case No : Civil Appeal No. 2739 of 1979

Mamanchand Ramjidas APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 07-11-1996

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

Citation : (1997) 94 ELT 23 : (1997) 11 SCC 340

Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In exercise of the powers conferred by Section 35A of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act'), the appellant was served with a show-cause notice dated 21-3-1973 alleging that the goods in question were 'permitted by the Central Excise Officer(s) to be cleared without being assessed to duty' under the Act. It was further stated that since the Board felt it necessary to satisfy itself about the correctness, legality or propriety of the decision on the part of the said Officer(s) in permitting such goods to be cleared without being assessed to duty, the appellant should show-cause within ten days of the receipt of the notice why the proper Officer(s) should not be directed to require them to take out a Central Excise Licence for the purpose and to demand the due duty leviable under any of the items, namely, 22-B, 19-I(2), 19-III, 22(3) or 22-AA of the First Schedule to the Act. It would be seen from this notice that even at that stage the Central Board of Excise and Customs was not sure as to under which item the material in question was liable to excise duty. Section 35A inter alia provides that the Board may, of its own motion or otherwise, call for and examine the record of any proceeding in which 'any decision or order' has been passed under this Act or the rules made there under for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order thereon as it thinks fit. The second proviso to that Section lays down that no proceedings

shall be commenced under this Section in respect of any decision or order after the expiration of a period of one year from the date of such decision or order. The words 'decision or order' clearly indicate that it must be a decision or order made under the provisions of the Act. In order to enable the appellant to reply to the show-cause notice, the appellant addressed a letter dated 31-3-1973 requesting the Board to clarify which decision or order passed by which officer it purported to revise. In reply to that, a reference was once again made to paragraph 4 of the show-cause notice by which it was said that the officer(s) had permitted clearance of the goods without assessing the same to duty. In other words, the reference was to the inaction on the part of the officer(s) to assess the goods to duty. Now, it must be remembered that by the order of 7-4-1971 the Collector of Central Excise had held that the goods were laminated and not liable to duty and it was pursuant to this order that the Excise Officers permitted the clearance of the goods without duty. If it was intended to revise the order of 7-4-1971 the show-cause notice was clearly barred by limitation. Since the show-cause notice does not mention any specific decision or order which the Central Board desired to revise, but only refers to the act of the Central Officers in permitting clearance of the goods without assessing them to duty, it is obvious that even invocation of revisional jurisdiction u/s 35A was not competent. But that apart if the invocation was based on the earlier decision dated 7-4-1971 to which Counsel for the respondent invited our attention, the same was clearly barred by limitation. Besides the period in relation to which duty is now claimed is between 16-3-1976 and 2-6-1977, i.e., long after the order of 7-4-1971, and the revision order is clearly based on the notice of 21-3-1973 and is not based on the amendment by which the word 'laminated' was added to Tariff Items 19-III and 22-B w.e.f. 16-3-1976. Therefore, viewed from any angle, the exercise of jurisdiction u/s 35A of the Act was clearly not justified.

2. In the result, we allow this appeal, set aside the impugned orders dated 13-4-1976 and 30-1-1979 to the limited extent of holding the appellant liable to pay duty for the period above mentioned. There will be no order as to costs.