(1995) 03 SC CK 0100

In the Supreme Court Of India

Case No : Civil Appeals No. 2797 Of 1984 With No. 1678 Of 1984

Metal Extruders (India) Pvt. Ltd. APPELLANT

Vs

Customs, Excise and Gold (Control) and Another
 Metal Extruders (India) Pvt. Ltd. Vs Union of India (UOI) and Others RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:
Central Excises and Salt Act, 1944 — Section 26-a(1a)

Citation : (1995) 1 MPJR 341

Hon'ble Judges : A. M. Ahmadii, C.J;S. P. Bharucha, J;K. S. Paripoornan, J

Bench : Full Bench

Final Decision : Allowed

Judgement

A.M. Ahmadi, C.J.,; S.P. Bharucha and; K.S. Paripoornan, JJ.-These two appeals arise out of the orders passed emanating from the show-cause notices dated 8-7-1980 and 21-8-1980 relating to the periods, 23-5-1979 to 30-4-1980 and 3-5-1980 to 30-6-1980 respectively. Counsel for the appellants raised four questions before us but it is not necessary to set them out as we think that the Tribunal''s refusal to record a finding on facts handicaps the hearing of these appeals. The Tribunal has in its order dated 16-11-1983 observed as under:

"The dispute really turns on facts. The appellants could not convince the Assistant Collector of Central Excise and the Collector of Central Excise (Appeals) that the goods shown as pieces in the invoices were in straight length. We do not think that we should interfere with concurrent findings of the fact by the two authorities when the appellants had failed to establish that pieces meant straight length. According to ISI specifications wire rods of copper should have thickness of more than 20 mm. In this case the product in question is of thickness of 10 mm and less. Hence they are not classified under Item 26-A(1a). Accordingly, Item 68 of the CET is more appropriate for these goods."

The order of the Tribunal does not show that it went into the question whether the commodity was in coil form or straight length for the purpose of deciding whether it was wire or rod and would fall under Section 26-A(1a) of the CET. In the circumstances we think it more appropriate that the matter should go back to the Tribunal to enable it to record the positive finding of fact in relation to the physical condition of the commodity in the context of the Tariff Item 26-A(1a) read with the subsequent instructions issued by the department. The answers to the other questions may also depend upon the finding of fact recorded by the Tribunal. In the instant case we think it was desirable for the Tribunal to record the finding of fact to answer the questions arising for determination in relation to the liability to pay excise duty. Both the learned counsel for the appellant as well as the Revenue also stated that it would help to come to a definite and positive conclusion if the Tribunal records its findings of facts in relation to the commodity in question. We, therefore, think it appropriate that the entire matter should go back to the Tribunal.

2. For the above reasons we set aside the impugned order of the Tribunal and remit the appeals to the Tribunal for decision afresh on all the matters arising in the appeals including questions which may have relevance having regard to the changed situation. The appeals are allowed accordingly with no order as to costs.