(1991) 03 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 2611 of 1981

Mukund A. Sayani APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Citation : (1992) 58 ELT 527

Hon'ble Judges : J.N. Bhatt, J;A.P. Ravani, J

Bench : Division Bench

Advocate : P.M. Thakkar, for the Appellant; B.B. Naik, for the Respondent

Judgement

Ravani, J.—Petitioner is manufacturing glass balls from the scrap of various glass items. The product manufactured by the petitioner was excisable and was falling under T.I. No. 23A(iv) of the First Schedule to the Central Excises & Salt Act as it was in force at the relevant time. The Superintendent of Central Excise, A.R. II, Division III, Ahmedabad, as per his order dated October 10, 1977, fixed the monthly duty liability of the petitioner to the tune of Rs. 24,987.25 (Rupees twenty four thousand nine hundred eighty seven and paise twenty five only) for the period commencing from August 12, 1977 to August 31, 1977, September, 1977 and October, 1977. The petitioner had challenged the legality and validity of the order passed by the Superintendent of Central Excise, Division III, Ahmedabad by filing Special Civil Application No. 1845 of 1979 in this High Court. When the petition came up for hearing on September 13, 1979, this Court passed the following order :

"Allowed to be withdrawn on oral application of Mr. P. M. Thakkar because the petitioner has a right of appeal against the impugned order. The appeal, when filed, shall be decided within 8 weeks. Notice discharged".

Thereafter the petitioner filed appeal and the said appeal had been rejected by the Collector, Central Excise (Appeals) by making following observations :

"4. It is seen from the order of the High Court of Gujarat at Ahmedabad, the Honourable Judges have not said anything about the limitation laid down for filing an appeal u/s 35 of the Central Excises Act, 1944. In other words, they have not directed the appellate authority to consider the appeal by way of waiving the delay in filing the appeal so far.

5. The appeal now filed by the appellant is clearly time barred u/s 35 of the Central Excises Act, 1944. The appeal is accordingly rejected".

It is obvious that the appellate authority has not read the order properly and has committed an error in reading the same. When this Court directed that the appeal should be decided within eight weeks, this Court meant that the appeal shall be decided on merits and not on the ground of limitation. On this short ground alone the order passed by the Collector (Appeals) produced at Annexure C to the petition is required to be quashed and set aside and the petition is required to be allowed.

2. In the result, the order at Annexure C dated January 1, 1980, passed by Collector-Appeals, is quashed and set aside. The Collector (Appeals) is directed to decide the appeal filed by the petitioner on merits and in accordance with law without raising the plea of limitation. Rule made absolute with no order as to costs.