(2015) 08 AHC CK 0017

In the Allahabad High Court

Case No : Writ Tax No. 354 of 2015

Om Shiv Transport APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35D
Customs Act, 1962 — Section 129C
Customs Tariff Act, 1975 — Section 9C
Finance Act, 1994 — Section 86

Citation : (2015) 323 ELT 427

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Nishant Mishra and S.D. Singh, for the Appellant; Gyan Prakash, ASGI, Ramesh Chandra Shukla and Ravi Prakash Srivastava, Advocates for the Respondent

Judgement

1. We have heard Sri S.D. Singh, the learned Senior Counsel assisted by Sri Nishant Mishra for the petitioner, Sri Ashok Mehta, the learned counsel for the Union of India and Sri R.C. Shukla & Sri B.K.S. Raghuvanshi for the Central Excise Department and the Registrar, Tribunal. On our request, the Advocate General is also present and was heard. Pursuant to the order of the Court dated 11-8-2015 Om Shiv Transport Vs. Union of India(2015) 322 ELT 781 the District Magistrate, Allahabad (hereinafter referred to the District Magistrate) has submitted a report which is contained in the affidavit of Sri Om Prakash Srivastava, Additional District Magistrate, Allahabad dated 19-8-2015. The District Magistrate as well as the Registrar, Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as the Tribunal) are also present in the Court.

2. The District Magistrate in his report has indicated that he had made an inspection of the various places as suggested by the Court in its order dated 11-8-2015 and contended that there is some space available in the Income Tax

Appellate Tribunal, Allahabad for temporary use of the Tribunal. Further, a large space is available in the office of the Central Excise Department, Allahabad, which is adjacent to the Income Tax building. The District Magistrate has recommended that this space, which is an old red building can be utilized temporarily for housing the Central Excise Tribunal. The District Magistrate has further suggested that a third floor could be constructed for housing a permanent Tribunal. The District Magistrate has further given certain suggestion of land being available by the Allahabad Development Authority and by private builders. A copy of this report has been given to the learned counsel appearing for the Union of India, who in turn will hand it over to the Registrar, Tribunal. The Registrar, Tribunal will consider the suggestion given by the District Magistrate in his report with regard to feasibility of establishing the Tribunal temporary at the place suggested by the District Magistrate and will also consider the suggestion of the District Magistrate with regard to establishing a permanent Tribunal as suggested by him. The Registrar, Tribunal will get in touch with the District Magistrate and take such assistance as required. The Registrar, Tribunal will consider the report of the District Magistrate and inspect the premises including the premises located in the campus of the Central Excise Department at Allahabad. In this regard, the Commissioner, Central Excise Department, Allahabad will give necessary assistance to the Registrar, Tribunal.

3. The District Magistrate is further directed to submit another report indicating the existence and availability or non-availability of the land and building belonging to the State Government and/or the land belonging to the Central Government, which can be requisitioned, acquired or purchased for the purpose of housing the Tribunal either on temporary basis or permanent basis. Such report shall be given by the District Magistrate within two weeks from today.

4. The Registrar, Tribunal has filed an affidavit. Upon perusal of the affidavit we are constrained to observe that no concrete effort was made for establishing a Bench at Allahabad in the last two years. If some effort had been made, a Bench would have started functioning a long time ago. However, without going into the cause of the malaise and moving forward, we find that pursuant to our last order, the Tribunal has now issued a notification dated 14-8-2015 purporting to be under Section 129C of the Customs Act, 1962 (52 of 1962) read with Section 35D of the Central Excise Act 1944, Section 86 of the Finance Act, 1994, Section 9C of the Customs Tariff Act, 1975 for constituting a regional Bench of the Tribunal at Allahabad in the State of Uttar Pradesh. The jurisdiction of this regional Bench at Allahabad is to deal the appeals arising from the territories within the State of Uttar Pradesh with effect from 1-9-2015 for the time being from room No. 210 & 220, second floor, office of the Commissioner of Central Excise, Customs & Service Tax, 38, M.G. Marg, Allahabad-21100.

5. From the aforesaid notification it becomes apparently clear that the regional Bench of the Tribunal at Allahabad will start functioning in a regular manner with effect from 1-9-2015 onwards. As a consequence thereof all the appeals, which

are pending before the Tribunal at New Delhi relating to the State of Uttar Pradesh will stand automatically transferred to the regional Bench at Allahabad. It also follows that the filing of fresh appeals will now be made at Allahabad from 1-9-2015 onwards. We, consequently, direct the Registrar, Tribunal to ensure that notices are sent to the parties in pending appeals intimating them about the transfer of their appeals to the regional Bench at Allahabad. The Registrar, Tribunal will issue an advertisement in the leading newspapers, which has a circulation in Delhi as well as in the State of Uttar Pradesh published in English and Hindi within 10 days from today intimating the public about the transfer of the pending appeals to the regional Bench at Allahabad and also with regard to the filing of fresh appeals under Central Excise Act, Customs Tariff Act, Finance Act and all other relevant laws with effect from 1-9-2015 onwards.

6. The notification dated 14-8-2015 makes it apparently clear that the regional Bench of Tribunal at Allahabad will start functioning from 1-9-2015. It necessarily means that not only registry of the Tribunal will start functioning at Allahabad from 1-9-2015, but the judicial functioning of the tribunal would also commence at Allahabad w.e.f. 1-9-2015. The Court has however, been informed that for the month of September, 2015 the Bench will function from 14-9-2015 to 18-9-2015 since previous notices have already been sent by the Tribunal. We, accordingly, permit the Tribunal to function for the period 14-9-2015 to 18-9-2015. However, from the month of October, 2015 the Tribunal should function on a regular basis and not one week in a month, as directed by the Court earlier.

7. Action taken by the Registrar, Tribunal shall be indicated to the Court on the next date. The Registrar, Tribunal will also indicate on the next date the progress with regard to the appointment of the Judicial Member and Technical Member, for which interview is stated to be scheduled on 22-8-2015. In the meanwhile, steps shall be taken by the Registrar, Tribunal for appointment of the necessary staff at Allahabad.

8. List on 7-9-2015, on which date the District Magistrate will file a fresh report. The Registrar, Tribunal will file a fresh affidavit of compliance. The District Magistrate and Registrar, Tribunal will also be present on the next date. A certified copy of this order be made available to Sri U.K. Pandey, the learned Standing counsel within 48 hours free of cost, who, in turn, will deliver the same to the District Magistrate.

