(1999) 11 AHC CK 0174

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1019 of 1999

Pravesh Castings (P) Ltd. APPELLANT

Vs

Commr. of C. Ex. RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO(3)
Central Excises and Salt Act, 1944 — Section 3A, 3A(4)
Constitution of India, 1950 — Article 226

Citation : (2000) 67 ECC 498 : (2000) 88 ECR 547 : (2000) 117 ELT 294

Hon'ble Judges : S.K. Jain, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Pankaj Bhatia, for the Appellant; Tej Prakash, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Central Excise and Customs Vs. M/s. Venus Castings (P) Ltd., AIR 2000 SC 1568 : (2000) 69 ECC 1 : (2000) 90 ECR 9 : (2000) 117 ELT 273 : (2000) 4 JT 77 : (2000) 3 SCALE 64 : (2000) 4 SCC 206 : (2000) 2 SCR 988 : (2000) AIRSCW 2160 : (2000) AIRSCW 1328 : (2000) AIRSCW 2025 : (2000) 4 Supreme 455 : (2000) 3 Supreme 257

1. By this petition under Article 226 of the Constitution of India the petitioner is aggrieved by the omission of the respondent No. 1 to dispose of the petitioner''s application u/s 3A(4) of the Central Excise Act (hereinafter referred to as ''the Act'') and also of the attempt of the respondents to force the petitioner to pay excise duty which is not due.

2. We have heard Shri Pankaj Bhatia, learned Counsel for the petitioner and Shri Tej Prakash, learned Counsel for the respondents.

3. The petitioner is engaged in the manufacture of excisable goods viz. M.S. ingots/runner riser. Section 3A of the Central Excise Act empowers the Central Government to charge excise duty on the basis of capacity of production in

respect of notified goods. The Commissioner determined the annual capacity of production of the petitioner''s unit. This was done u/s 3A(4) of the Act by order dated 30th September, 1997 fixing the annual production capacity at 35361.920 MT and the duty payable per month at 18,41,767/-. The petitioner was aggrieved by the said determination and filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The said appeal was allowed by an order dated 26th May, 1998. The Tribunal set aside the Commissioner''s order and directed the Commissioner to decide the matter afresh after giving the petitioner an opportunity of hearing. Thereafter the Commissioner passed an order dated 3-12-1998 taking an entirely different stand i.e. that Section 3A(4) of the Act had no application because the petitioner had opted for payment of duty under Rule 96ZO(3) of the Central Excise Rules, 1944. Aggrieved by this order, the petitioner again went to the Tribunal and by order dated 13-5-1999 the Tribunal allowed the petitioner''s appeal and remanded the matter to the Commissioner to redetermine the production capacity afresh. Since then the matter is stated to be pending before the Commissioner of Central Excise who has to determine the production capacity u/s (4) of Section 3A of the Act. The petitioner''s grievance is that though the matter is still pending the respondents are insisting "payment of excise duty" on the basis of the earlier determination that has been set aside by the Tribunal and is not in legal existence. For this purpose the respondent No. 2 is said to have visited the petitioner''s unit and threatened to attach the unit of the petitioner.

4. No counter affidavit is proposed to be filed and having heard the learned counsel for the parties, the writ petition is disposed of as under :-

1. The respondent No. 1 is directed to determine the actual production of the petitioner''s unit in compliance with the Tribunal''s order dated 13-5-1999 within a period of three months from the date of presentation of a certified copy of this order before him by the petitioner.

2. Till the re-determination of the actual production and the duty payable as above, the respondents are restrained from forcing the petitioner to pay excise duty in terms of any earlier determination of the annual capacity of production and the duty payable.

