(2001) 02 SC CK 0189

In the Supreme Court Of India

Case No : Civil Appeal No. 2761 of 1991

Premier Cable Co. Ltd. APPELLANT

Vs

Government of India and Others RESPONDENT

Date of Decision : 21-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 10 SCC 635

Hon'ble Judges : V. N. Khare, J;S. N. Variava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant-Company, now under liquidation, was engaged in manufacture of Aluminium strips. On 4-3-1975, the Assistant Collector, Central Excise, assessed the excise duty on the commodity manufactured by the appellant under Entry 27(b) of the Schedule. Aggrieved, the appellant preferred an appeal before the appellate authority challenging the assessment order passed by the Collector. The said appeal was dismissed on the ground of delay. The appellant, thereafter, carried the matter to the Central Government by filing a revision. The revision was also dismissed. The appellant, thereafter filed a writ petition in the High Court of Kerala challenging the order passed by the Assessing Officer as well as the order passed by the revisional authority by means of a petition under Article 226 of the Constitution. One of the contention advanced before the High Court was that even if the appeal was barred by time, the appellate authority has power to condone the delay. The plea of the appellant was rejected. Consequently, the writ petition was also dismissed. While the writ petition was pending, the Department sent a notice of demand on 25-5-1977 consequent upon the assessment order dated 4-3-1975. In the year 1980, the appellant filed a suit for declaration and injunction before the Court of Sub-Judge, Irinjalakuda. The Court took the view that it has no jurisdiction, therefore, the Court returned the plaint and the same was filed by the appellant before the Court of Sub-

Judge, Parur. The trial Court was of the view that the levy was illegal. However, the suit was dismissed as barred by time. The appellant thereafter filed a first appeal before the High Court which was also dimissed. Against the said judgment, the apellant is in appeal before us.

2. Learned counsel appearing for the appellant urged that the view taken by the High Court that the suit was barred by time is erroneous. After we heard the matter, we find that the suit filed by the appellant was barred by principle of res judicata. As stated above, the appellant challenged the assessment order by means of an appeal before the appellate authority. The appeal was dismissed on the ground of delay and the revision against the said order was also rejected. The writ petition filed against the revisional order was also dismissed. Once the writ petition was dismissed and the said judgment was not challenged before the superior Court, the assessment order passed against the appellant attained finality. The assessment order having attained finality, the levy could not have been challenged by means of a separate suit in the Civil Court. Yet there is another ground on which the suit ought to have been dismissed. We have seen the plaint and find that the assessment order was not challenged in the plaint. It is true that in narration of the fact, the orders of assessing officer, the appellate authority and the revisional authority were mentioned in the plaint but no relief was sought for setting aside those orders. So long those orders are allowed to stand, no relief could have been granted to the appellant in the suit.

3. For these reasons, we do not find any merit in the appeal. It is accordingly dismissed with costs.

