(2001) 01 AHC CK 0119

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1103 of 1999

Sabarmati Steels and Alloys (P) Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:
Finance (No. 2) Act, 1998 — Section 88, 89, 90

Citation : (2001) 73 ECC 663

Hon'ble Judges : Sudhir Narain, J;Bhagwan Din, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner seeks a writ of mandamus commanding the Commissioner of Central Excise, Kanpur-I respondent to settle the case of the petitioner granting it the benefit of the provisions of Kar Vivad Samadhan Scheme.

2. The version of the petitioner is that it is engaged in the manufacture of M.S. ingots falling under Chapter Sub-Heading 7206.90 of the Central Excise Tariff Act, 1985 and is duly registered for the same with the Central Excise department. The petitioner was served with two show cause notices dated 24.8.1993 and 21.11.1994 alleging as to why Modvat credits amounting to Rs. 1,62,765 and Rs. 1,75,579 availed during the months of March and June, 1993 respectively be not disallowed as the same were availed of on the basis of invalid documents and as to why the said amounts be not recovered from it and as to why it may not be penalised for wrongly availing the Modvat credits. The petitioner filed objections to the said show cause notices. The Deputy Commissioner (Prev.) Central Excise Kanpur-I, rejected the objections of the petitioner and disallowed the Modvat credits of Rs. 3,38,284 and imposed a penalty of Rs. 3,50,000 on the petitioner. The petitioner preferred an appeal against the said order before the Commissioner (Appeals), Allahabad.

3. The Government of India by Finance Act, 1998 had introduced a Kar Vivad

Samadhan Scheme, 1998. The scheme was intended to be a one time measure. The scheme was effective from 1.9.1998 to 31.12.1998, which was subsequently extended up to 31.1.1999.

4. The petitioner to avail the benefit of the said Scheme, filed declaration to the designated authority i.e. the Commissioner of Central Excise, Kanpur which was received in his office on 24.12.1998. The petitioner was served with a letter dated 23.2.1999 issued by the Deputy Commissioner (Tech.) Central Excise, Kanpur-1 stating that since the petitioner has not submitted any proof of the office of the Commissioner (Appeals) that the appeal filed by it was acknowledged and was pending and, therefore, the declaration filed by the petitioner in terms of Section 89 of the Finance (No. 2) Act, 98 does not merit consideration under the said Scheme, 1998. The petitioner is alleged to have submitted a reply before the Commissioner, Central Excise Kanpur on 26.2.1999. The petitioner received a letter dated 23.3.1999 issued by the Superintendent Central Excise Range-I, Jhansi enclosing the letter dated 10.3.1999 of the Assistant Commissioner (Adj.) Central Excise, Kanpur-I stating that the petitioner has not furnished the proof relating to the filing of the appeal and it was not made available within the prescribed time limit, the petitioner is not entitled to the benefit of the scheme as declared u/s 88 of the Finance (No. 2) Act, 1998 for determination of the sum in terms of Section 90(1) of the Act. The petitioner aggrieved against the action of the respondent, has approached this Court.

5. The basic question is whether the declaration given by the petitioner was in accordance with law and secondly whether the petitioner had submitted relevant proof and documents relating to the filing of the appeal. In column No. 3 the petitioner had made the following declaration.:

appeal with Commissioner C.Ex. (Appeal), Allahabad. Appeal sent by Registered post on 3.10.1998.

6. In para 6 of the counter-affidavit filed on behalf of the respondent, it is admitted that the petitioner had submitted declaration on 24.12.1998 and in column No. 3 a declaration was made by the petitioner that it had filed the appeal before the Commissioner (Appeals), Allahabad by Registered post on 3.10.1998. The only ground taken in the counter-affidavit is that the petitioner did not enclose the copy of the appeal filed before the Commissioner (Appeals) with its declaration as required under the instruction (4) and column (3) of the declaration. In this paragraph itself it has been admitted that a copy of the appeal bearing No. 539-CE/App/KNP-I dated 8.10.1998 allotted by Commissioner (Appeals) to this office, was filed on 11.1.1999. The petitioner had given the declaration as required u/s 89 of the Finance (No. 2) Act, 1998. The petitioner had also filed a copy of the memo of appeal on 11.1.1999. We do not find any reason not to consider the application of the petitioner in accordance with law.

7. In view of the above, the writ petition is allowed and the respondent is directed to consider the case of the petitioner for settlement in accordance with

the provisions of Kar Vivad Samadhan Scheme preferably within a period of three months from the date of production of a certified copy of this order.

8. The parties shall bear their own costs.

