(1996) 01 MAD CK 0022

In the Madras High Court

Case No : Writ Appeal No. 62 of 1996 and CMP. No. 1215 of 1996

Salem Co-Operative Sugar Mills Ltd. APPELLANT

Vs

Superintendent of Central Excise RESPONDENT

Date of Decision : 25-01-1996

Acts Referred:

Citation : (1996) 54 ECC 142

Hon'ble Judges : K.A. Swami, C.J;Kanakaraj, J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—At the stage of admission, Shri Krishnan, learned Additional Central Government Standing counsel is directed to take

notice for the respondents. Accordingly, he has put in appearance for the respondents. As the appeal lies in a narrow compass, it is admitted and

heard for final disposal.

2. The appeal is preferred against the order dated 7.11.1995 passed by the learned single Judge in W.P.6330 of 1985. Learned single Judge has

disposal of the writ petition in the following terms:--

At the very outset I would like to state that the learned Advocate for the writ petitioner did not argue the matter on merits to set aside the order

passed by the respondents, but argued only to the limited extent of remanding the matter to the lower authority for fresh disposal according to law.

On the other hand, the learned Advocate for the respondents relied upon a decision taken by this Court in W.P.No. 5589 of 1983 dated

15.11.1991 reported as Salem Co-operative Sugar Mills Ltd. v. The Assistant Collector of Central Excise and Anr. in [1994] 47 ECC 55 (Mad)

which is a covered decision against the writ petitioner. On the other hand, the learned Advocate for the writ petitioner relied upon a decision of the

Apex Court reported in Collector of Central Excise Vs. Neoli Sugar Factory etc. etc., The finding given by Their Lordships in the above decision

is not at all helpful to the writ petitioner for remanding the matter to the lower authority for fresh disposal in accordance with law in view of the fact

that decision rendered by this Court in W.P.No. 5589 of 1983 dated 15.11.1991 is against the writ petitioner. Under the above circumstances,

this writ petition is liable to be dismissed as there are no merits.

3. It is relevant to note that in the writ petition, the petitioner/appellant sought for declaring Clause 3 of the notification 135/83 dated 30th April,

1983 as issued by the Union of India under Rule 8(1) of the Central Excise Rules, 1944 as null and Void. Learned single Judge of this Court in

W.P.5589 of 1983 dated 15.11.1991 has upheld the validity of the aforesaid clause. However, it is not necessary to go into the question as to the

correctness of the decision in writ petition 5589 of 1983 dated 15.11.1991, in view of the submission made by Learned Counsel for the

petitioner/appellant that the entire matter may be kept open for him to be urged before the appropriate authority. This submission, if accepted,

does not affect the interest of the respondents, because the 2nd respondent is required to consider the contentions, which are may be raised by the

appellant/petitioner.

4. We, accordingly, dispose of the writ appeal in the following terms:--

The Order under appeal is modified. All the contentions raised by the petitioner/ appellant are left open to be urged before the appropriate

authority. The is also disposed of. However, we make no order as to costs.