(1999) 12 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 79 of 1994

Sapa Electronics Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35B
Constitution of India, 1950 — Article 226

Citation : (2000) 70 ECC 610 : (2000) 118 ELT 571

Hon'ble Judges : M.C. Agarwal, J;B.K. Sharma, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; Surya Prakash, for the Respondent

Final Decision : Dismissed

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges an adjudication order, dated 30-6-1993 passed by the Assistant Collector, Central Excise and the first appellate order, dated the 29th October, 1993 passed by the Collector (Appeals), Central Excise. It is also prayed that a circular issued by the Central Board of Indirect Taxes, dated 15-12-1992 be quashed and the last prayer is that a judgment of the Customs, Excise & Gold (Control) Appellate Tribunal passed in case of Chetna Industries v. Collector of Central Excise be declared to be incorrect.

2. We have heard Sri A.P. Mathur, learned Counsel for the petitioner and Sri Surya Prakash, learned Standing Counsel for the respondent.

3. The order passed by the Collector (Appeals) is further amenable to second appeal before the Tribunal u/s 35B of the Central Excise Act, 1944. The case of the petitioner is that the Tribunal has already taken a contrary view in the case of Chetna Industries v. Collector of Central Excise holding that Modvat credit was not available when the original document was lost. The circular issued by the Board also stated the same. Thus the petitioner''s case is that filing of any appeal

before the Tribunal would not have been an efficacious remedy. We do not agree with such contention. The appeal is statutorily provided and, therefore, simply because the Tribunal has already taken same view on the matter, the appellate procedure cannot be by-passed. It was open to the petitioner to persuade the Tribunal to get the matter referred to a Larger Bench or to wait for the decision of the appeal and then adopt further course of legal action like a reference to the High Court.

4. As regards a circular, the same was not binding on the appellate authorities and hence that could not come in the way of the Tribunal in taking a correct view of the matter. The petitioner thus had an alternative remedy and this writ was ill advised. The prayer that the Tribunal''s order in another case be declared to be incorrect is also misconceived and ill advised. The writ petition is, accordingly, dismissed.

