(1999) 11 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1018 of 1999

Sarada Steels Industries (P) Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3A, 3A(2), 3A(4)
Constitution of India, 1950 — Article 226

Citation : (2000) 88 ECR 548 : (2000) 117 ELT 3

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

Bench : Division Bench

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

Judgement

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 demand of duty without such disposal.

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

3. The petitioner is running a mill manufacturing hot re-rolled non alloy steel and produces goods that are subject to excise duty. Section 3A of the Act empowers the Central Government to charge excise duty on the basis of capacity of production and such capacity was determined by the Commissioner of Central Excise under Sub-section (2) of Section 3A of the Act. The petitioner has moved an application under Sub-section (4) of Section 3A claiming that the actual production in its factory is lower than the production determined under Sub-section (2). Sub-section (4) requires the Commissioner to determine the actual production after giving an opportunity to the assessee in support of his claim and re-determine the amount of duty payable with reference to such actual production.

4. By an order dated 30th September, 1997 the Commissioner had determined the actual production capacity of the petitioner at 32,323.4145 MT on which duty of Rs. 8,08,085/- was payable per month. Against this, the petitioner moved an application u/s 3A(4) of the Act which was dismissed by an order dated 23-3-1998. The petitioner filed appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi which set aside the order and directed that the matter be decided afresh after giving an opportunity of personal hearing to the tax prayer. The Commissioner again decided the matter by an order dated 11-1-1999 upholding the earlier determination. The petitioner again appealed to the said Tribunal and by order dated 21st April, 1999 the Tribunal again set aside the Commissioner''s order and directed the Commissioner to decide the matter afresh after furnishing a copy of the expert report relied upon by the Commissioner to the petitioner. Thus, the petitioner''s application u/s 3A(4) of the Act is pending before the Commissioner.

5. The petitioner''s grievance is that although the said application has not been decided, yet the respondents are demanding excise duty in terms of the order dated 3-9-1997 or the order dated 11-1-1999 both of which do not exist. It is claimed that for this purpose the respondent No. 2 visited the petitioner on 22-10-1999 and threatened to attach the unit.

6. No counter affidavit is proposed to be filed and in the circumstances of the case and after hearing the learned Counsel for the parties, this writ petition is disposed of as under :-

1. The respondent No. 2 is directed to dispose of the petitioner''s application u/s 3A(4) of the Act in accordance with the Tribunal''s order dated 21-4-1999 within a period of three months from the date, a certified copy of this order is presented before him by the petitioner.

2. Till the disposal of the said application and the determination of the amount of duty payable by the assessee, the respondents will not demand excise duty in terms of the orders dated 30-9-1997 and 11-1-1999.

