
(1988) 12 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2001 of 1988

Shri Virendra Amritlal Thakkar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-12-1988

Acts Referred:

Citation : (1989) 44 ELT 423

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Judgement

Om Prakash, J.—Heard learned counsel for the parties. In this writ petition, the petitioner prays that a writ of mandamus be issued against the respondents directing them to refund an amount of Rs. 1,24,822/-, paid under protest for the period from 28-7-1969 to 3-2-1972. The petitioner manufactures metalised yarn and the question arose whether the said goods fell under Item 15-A(2) as an article of plastic and whether that was covered by Item 18 as synthetic yarn. The Customs, Excise and Gold (Control) Appellate Tribunal by the order dated 16-4-1985 (Annexure "T to the writ petition) held in favour of the petitioner that the metalised yarn fell under Item 15A(2) and not under Item 18 CET. In the light of this decision of the Tribunal, the petitioner put his claim for refund of duties, which had been paid for the aforesaid period, but the Tribunal made the observation that the claim of the appellant, beyond the period of one year, was barred by limitation and unless the duty was proved to have been paid under protest, no refund would be made. To enable the petitioner to prove that the duty had been paid under protest, the Tribunal directed that the petitioner could prove to the satisfaction of the Assistant Collector that the duties had been paid under protest throughout. Thereafter the petitioner approached the Assistant Collector, who found that the petitioner had failed to establish that the duties had been paid under protest. The order of the Assistant Collector dated 21-7-1988 (Annexure "13" to the writ petition) is appealable. The petitioner having the statutory right of appeal against the order of the Assistant Collector, the writ petition is dismissed in limine. The petitioner informs that the limitation for filing

the appeal expired somewhere in November, 1988, but before the writ petition was filed. Since we are dismissing the petition in limine on the ground of alternative statutory remedy, we direct that the appellate authority will not reject the appeal, if filed by the petitioner within two weeks from today, on the ground of limitation. Since the matter is pending for a long time, the appellate authority may dispose of the appeal within the period of three months, if possible.

2. Let a certified copy of this order may be given to the learned counsel for the parties, on payment of usual charges, within 24 hours.