

(2004) 02 KL CK 0004

In the High Court Of Kerala

Case No : Writ Petition (C) No. 40207 of 2003

Supra Hi-Tech Electro Equip. (P) Ltd.

APPELLANT

Vs

Dy. Commr. of C. Ex.

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Citation : (2005) 184 ELT 17

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : A.M. Madhavan Unni, Sreelal N. Warriar and S.S. Radhakrishnan, for the Appellant;

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging Ext. P2 order dated 25-8-2000 which is an adjudication order under the Central Excise Act passed more than three years. The petitioner did not file appeal. Since statutory appeal is provided there is no scope for entertaining the Writ Petition. The fact that the petitioner slept over the matter and did not file appeal is not a ground for entertaining the Writ Petition. The petitioner's case is that the issue is covered by decision in another case by the Tribunal. According to the Standing Counsel the decision of the Tribunal in another party's case does not apply to the petitioner and does not have the effect of superseding Ext. P2 order. He has also pointed out that SLP is filed against the order of the Tribunal and so long as the Department has not accepted the Tribunal's order, the Department will not follow the same and if Ext. P2 remains unchallenged they will proceed to recover the duty assessed. In the circumstances and having regard to the contentions raised the petitioner is given an opportunity to file appeal against Ext. P2 on condition of payment of 50% of the demand subject to contest in appeal. If 50% is paid and appeal is filed within one month from today, the Commissioner will entertain, dispense with pre-deposit of balance and dispose of the appeal treating the appeal as one filed in time. If appeal is allowed, the petitioner will be entitled to

refund of the amount.