**(2002) 08 JH CK 0124**

**In the Jharkhand High Court**

**Case No :** Writ Petition (T) No. 3185 of 2002

Timken India Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

**Date of Decision :** 12-08-2002

**Acts Referred:**

Central Excise Rules, 2002 — Rule 16(3)
Central Excises and Salt Act, 1944 — Section 35B
Constitution of India, 1950 — Article 226

**Citation :** (2002) 08 JH CK 0124

**Hon'ble Judges :** Vinod Kumar Gupta, C.J;Hari Shankar Prasad, J

**Bench :** Division Bench

**Advocate :** Debi Pal, M.S. Mittal and A.R. Choudhary, for the Appellant; P.K. Prasad, Sr. CGSC, for the Respondent

## Judgement

At the very threshold Mr. P.K. Prasad, learned Standing Counsel for the Central Government submitted that u/s 35B of the Central Excise Act, 1944 the petitioner has an alternative remedy of filing appeal before the Appellate Tribunal inasmuch as Clause (a) of Sub-section (1) of Section 35B clearly stipulates, lays down and provides that any decision or order passed by the Commissioner of Central Excise as an adjudicating authority is appealable before the Appellate Tribunal Section 2(a) of the Central Excise Act, 1944 defines an "adjudicating authority" to mean any authority competent to pass any order or take any decision under the Act. What has been challenged in this petition by the petitioner in fact is an order (which may also be called as a decision) passed by the Commissioner in terms of Rule 16(3) of the Central Excise Rules, 2002. Even though Dr. Debi Pal, learned Sr. Counsel appearing for the petitioner very vehemently argued that the Commissioner did not have any jurisdiction to pass the impugned order or take the impugned decision, we find that the question of jurisdiction is not involved in this case, inasmuch as Rule 16(3) (Supra) clearly enjoined upon the Commissioner to take a decision if the applicability of Sub-rules (1) and (2) of Rule 16 was involved. The Commissioner apparently has taken a decision and has passed an order under Sub-rule (3) of Rule 16 (Supra) and, therefore, the decision/order squarely falls within the ambit and scope of Section 35B(1)(a) of the Central Excise Act, 1944 and hence is appealable before the Appellate Tribunal.

2. We must hasten to add with fullest responsibility at our command that we are dismissing this petition only on the ground of the petitioner not having availed of the alternative remedy. We have not at all gone, into the merits of the controversy forming the subject-matter of this petition. All issues and questions raised in this petition are left open to be decided by the Appellate Tribunal.

3. At this stage, Dr. Debi Pal submits that we should make an observation with respect to the limitation aspect of the appeal, if the petitioner decides to file any appeal before the Appellate Tribunal.

4. Sub-section (3) of Section 35B prescribes a limitation period of three months for filing an appeal. Sub-section (5), however, permits the Appellate Tribunal to admit an appeal after the expiry of the aforesaid period of limitation, if it is satisfied that there was sufficient cause for not presenting the appeal within the aforesaid period. It shall be open to the petitioner to apply to the Appellate Tribunal for condonation of delay in filing the appeal. If the appeal is filed within one month from today, accompanied by the said application for condonation of delay, we do hereby observe that the pendency of the present writ petition in this Court should be considered as a sufficient cause for not presenting the appeal before the Appellate Tribunal within the prescribed period of limitation. We also direct that the hearing and disposal of the appeal before the Tribunal shall be expedited. It shall also be open to the petitioner to pray for the grant of interim relief before the Tribunal during the pendency of the appeal. Such a prayer of course may be considered and disposed of on its own merits and in accordance with law.