
(2005) 09 AHC CK 0030

In the Allahabad High Court

Case No : Central Excise Appeal No. 208 of 2005

Trimurti Fragrance Private Limited

APPELLANT

Vs

The Commissioner of Central Excise

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Citation : (2005) 189 ELT 129

Hon'ble Judges : Dilip Gupta, J; A.K. Yog, J

Bench : Division Bench

Advocate : Pankaj Bhatia, for the Appellant; K.C. Sinha and Girdhar Gopal Tripathi, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and Dilip Gupta, JJ.—Heard Sri Pankaj Bhatia, Advocate on behalf of the appellant and Sri Giridhar Gopal Tripathi, Advocate on behalf of sole contesting respondent (Commissioner of Central Excise, Kanpur Nagar, Kanpur). Perused impugned judgment and order dated 11-3-2005 (served on the appellant on 11-4-2005) giving rise to the present Central Excise Appeal No. 208 of 2005 filed by the appellant/M/S Trimurti Fragrance Private Limited, Kanpur Nagar, Kanpur.

2. The substantial questions of law, arising in the present appeal (added by way of amendment under our order passed today) are :

"Whether the tribunal has committed an error of law in rejecting the adjournment application filed by the counsel for the Appellant on the ground that matter has been adjourned earlier also from time to time without applying its mind to the averments made in the adjournment application filed on the date fixed ?" and again "whether the tribunal ought to have adjourned the matter as the counsel for the appellant was unwell and had moved an application for the same more so when the said application was not opposed by the opposite party?"

3. We reframe-the substantial question of law as follows:

"Whether the Customs, Excise & Service Tax Appellate Tribunal , New Delhi was justified and acted in accordance with law in passing the impugned judgment and order dated 11-3-2005 behind the back of the appellant (respondent before the Tribunal) without considering the genuineness of the ground mentioned for seeking adjournment on the date in question and having proceeded behind the back of the appellant only on the ground that earlier also the matter was got adjourned from time to time either for non-appearance of the counsel or on the request of the appellant?"

4. In our opinion, the aforesaid substantial questions of law do arise in the facts and circumstances of the case.

5. The approach of the Tribunal i.e. rejection of adjournment application, on a particular date-fixed for hearing on the ground that earlier also adjournments, without adverting to the genuineness of the ground for adjournment on the date in question, is apparently taking into account extraneous considerations which are not relevant to determine the said adjournment application and cannot be approved in law.

6. Whether adjournments were "frivolous" or "without merit" or for "extraneous consideration" ought to have been looked into when "adjournments" were under consideration and allowed in the past. The Tribunal ought to have considered the adjournment application filed on 11-3-2005 (which is said to have been duly supported by medical certificate) on its own merit.

7. There is nothing in the impugned order to show that the Tribunal was not satisfied with the explanation submitted by the appellant in the said adjournment application or the genuineness of the medical certificate annexed therewith. The Tribunal has in fact rejected the adjournment application on extraneous ground (as discussed above) and proceeded to hear the appeal on merit which amounts to denial of opportunity of hearing to the appellant.

8. The above view taken by us finds support from the ratio decidendi laid down by the Apex Court in the case of State Bank of India Vs. Km. Chandra Govindji, Paragraphs-7 and 8 of the said judgment read:

"7. In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.

8. In that view of the matter, we set aside the order made by the Rent Controller

as affirmed by the District Judge and the High Court and remit the matter to the Rent Controller for a fresh consideration from the stage when the matter was set down on 24-11-1992 and after notice to the parties proceed to dispose of the matter as expeditiously as possible. "

9. We need not refer to other findings of the Tribunal in the impugned order dated 11-3-2005 touching the merit of the case inasmuch as the impugned judgment and order dated 11-3-2005 cannot be sustained and is liable to be set aside in view of our discussion earlier in this judgment. It will be in the fitness of things that the Tribunal be required to decide the appeal afresh after giving opportunity of hearing to the appellant (before us).

10. In view of the above, impugned judgment and order dated 11-3-2005 (challenged before us) in the present Excise Appeal is hereby set aside and the case is sent back to the concerned Authority/Respondent No. 1 for deciding the matter afresh after notice to the parties and the Tribunal shall endeavour to dedcide the matter expeditiously.

11. The appeal stands allowed subject to the above observations/directions.