

(1997) 12 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 393 of 1994

Tullu Engineering Works

APPELLANT

Vs

CEGAT and Others

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35L

Citation : (1998) 75 ECR 516

Hon'ble Judges : R.K. Gulati, J;M.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the parties.
2. This writ petition is directed against the order dated 3rd December, 1993 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The petitioner was engaged in the manufacture of regulators for controlling speed of electric motors, exhaust fans in addition to other own products. It was claimed that the regulators were classifiable under sub-heading 8479 of the Schedule of the Central Excise Tariff Act, 1985 having description of "machines and mechanical appliances having individual function not specified or included elsewhere in Chapter 84". The Assistant Collector, however, classified the product under sub-heading No. 8501.00 of the aforesaid Act taking the help of Section No. 4 of Section XVI. The petitioner took the matter before the Appellate Collector of Central Excise where it was held that the regulators were classifiable under sub-heading 8503.00. Against the appellate order the matter was taken by revenue before the Tribunal. The petitioner also preferred an appeal to the Tribunal against the confirmation of demand under sub-heading 8503.00 but it did not challenge the classification upheld by the first appellate authority. By the impugned order the Tribunal has upheld the contention of the revenue. Feeling aggrieved the petitioner has preferred this writ petition.

3. In our opinion, no case for interference has been made out. The dispute before the Tribunal was whether regulators fall under sub-heading 8501.00 of the Schedule or sub-heading 8503.00. The Tribunal has in clear terms held that the speed regulators cannot be treated as part of electric machines. It was mainly an accessory of electric motors and was, therefore, classifiable under sub-heading 8501.

4. Learned Counsel for the petitioner contended that in the memorandum of appeal before the Tribunal the petitioner had challenged the classification also and the Tribunal was wrong in expressing the view to the contrary. If that be so the petitioner should have approached the Tribunal for rectification of its order and asking for adjudication of the point if it was urged and was not decided by it. Nothing of the sort was done by the petitioner. Moreover, the petitioner had a remedy of appeal against the Tribunal's order before the Supreme Court as provided u/s 35L of the Central Excises and Salt Act, 1944 but this course was also not adopted by the petitioner for the reasons best known to it.

5. For what has been stated above, the writ petition is dismissed with costs.