(1982) 03 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 5652, 5653, 5654 and 8048 of 1981

Tungbhadra Industries Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 02-03-1982

Acts Referred:
Central Excise Rules, 1944 — Rule 11

Citation : (1983) 12 ELT 709

Hon'ble Judges : Alladi Kuppuswami, C.J;Seetharam Reddy, J

Bench : Division Bench

Advocate : P. Babulu Reddy, for the Appellant; K. Subrahmanya Reddy for the Central Government, for the Respondent

Judgement

Alladi Kuppuswami, C.J.—In this batch of Writ Petitions, the first and main question for consideration is whether the petitioners are liable for excise duty on post-manufacturing expenses. In view of the decision of this Court in Indo National Ltd., Nellore and another v. Union of India and others 1979 E.L.T. 234 which wAs followed in the recent decision of this Court in Writ Petition No. 650 of 1980, dated 31-12-1981 the contention that the petitioners are not liable to pay this amount has to be allowed.

2. It is however, argued on behalf of the respondents that the petitioners should not be allowed to enrich themselves unjustly at the instance of the person from whom the petitioners collected excise duty. This contention has to be negatived in view of our decision in Writ Petition No. 650 of 1980, dated 31-12-1981. There will be directions similar to what have given at the end of the judgment in the said writ petition.

3. It is also contended on behalf of the respondents that the claim in barred by limitation. The decision of this Court holding that no excise duty can be levied on post-manufacturing expenses was rendered on 25-12-1979. As the claim was made within three years of the said date, it must be held that the claim is not barred by limitation under Rule 11 of the Excise Rules in view of the decision of

this Court in J. & J. Dechane, Hyderabad v. Union of India and others 1978 E.L.T. 487 and the decision of the Madras High Court in Madras Aluminium Co. Ltd. and another v. Union of India 1981 E.L.T. 478. In Writ Petition Nos. 5653 and 5654 of 1981 a further contention is raised by the respondents that the petitioners have availed themselves of the remedy way of revision to the Central Government and hence this Court ought not to interfere in the exercise of its jurisdiction under Article 226 of the Constitution. As we have held that the levy of excise duty was clearly contrary to law and the claim is justified and there is no question of limitation, we consider that in the circumstances the existence of another remedy and the Government exercising its jurisdiction suo motu will not bar the petitioner from approaching this Court under Article 226 of the Constitution. All the contentions raised on behalf of the respondents are therefore negatived.

4. It is however, brought to out notice that the exact quantum of the post-manufacturing expenses have not been determined in view of the fact that the petitioners did not produce any evidence before the Assessing Authority to substantiate their claim. Therefore, we consider this a fit case to direct the second respondent to determine the post-manufacturing expenses after giving a reasonable opportunity to the petitioner to produce the necessary evidence in support of their claim.

5. The Writ Petitions are accordingly allowed as indicated above. No costs.

6. An oral application for leave to appeal to the Supreme Court is made on behalf of the respondents. As substantial question of law of general importance as stated in the main Writ Petition arise and as leave has been granted in Writ Petition No. 650 of 1980 and other connected cases, we consider these are fit cases for granting leave.

7. An oral application for suspension of the operation of the order is made on behalf of the respondents. We consider it desirable to give a direction that the petitioner will be paid the amount due to them after determination of the amount on condition that the petitioners furnish bank guarantee to the satisfaction of the Assessing Authority. The Assistant Collector will dispose of the claim expenditiously in view of this directions, no further orders regarding stay are necessary.