
(2006) 07 MP CK 0019
In the Madhya Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

Modella Steels and Alloys Ltd.

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Citation : (2006) 07 MP CK 0019

Hon'ble Judges : N.K. Mody, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an application made by Commissioner of Central Excise and Customs, Indore u/s 35(G)(3) of Central Excise Act, 1944 read with Rule 218(1) of Central Excise Rules for calling the question of law to be answered by this Court in its reference jurisdiction which according to applicant arises out of an order, dated 9-4-1999, passed by CEGAT in Appeal No. E/3390/92-B-1/E/CC/426/92-B-1. Since by order, dated 5-5-2000, the CEGAT dismissed the application made by the applicant in E/Ref./222/99-B for making reference to this Court on the question proposed and hence, the need to file this application praying for calling the questions proposed for being answered by this Court.

2. Heard Shri V.K. Zelawat, learned Assistant Solicitor General of India for the applicant. None for the non-applicants.

3. Having heard learned Counsel for the applicant and having perused record of the case, we are of the view that no referable question of law arises out of the appellate order, referred supra and that question proposed really do not arise and if arise, cannot be regarded as being referable to this Court. As a consequence, the CEGAT was justified in dismissing the application made by the applicant and we also while concurring with the view so taken by the Tribunal uphold the same and dismiss the application.

4. At the outset, we may observe that the CEGAT while allowing the appeal filed

by assessee (respondent herein) had remanded the case to the authorities concern for calculating the incentive. It is not known as to what happened after remand because the remand order was passed as back as in the year 1999 and in the absence of any stay of proceedings 7 years has elapsed. Learned Counsel for Revenue was unable to make any statement as to whether remand order was implemented during this period or not. Be that as it may, we are of the view that since it was a case of remand and secondly, taking into consideration the time already elapsed, we do not find it proper to call for any question. It is neither legal, nor proper, nor even referable. It is not even academic involving any legal question for future guidance.

5. That apart, in our view, the Tribunal, while dismissing the application was right in holding that no application can be filed for making reference because the issue involved in this case was relating to rate of duty. In a case where the issue relates to determination of duty based on some notification then, the remedy lies in filing appeal to Supreme Court and not in claiming reference to High Court. On facts involved in this case, we are inclined to uphold this reasoning of the Tribunal as well. As a consequence, the application filed by the Commissioner in calling for the reference on the question proposed is found to be devoid of any merit. It fails and is accordingly, dismissed.

No costs.