(1996) 10 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 731 of 1996

U.P. State Cement Corpn. Ltd. and Others APPELLANT

Vs

CEGAT and Others RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226, 35G

Citation : (1997) 70 ECR 278

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner, namely, U.P. State Cement Corporation Ltd. challenges an order dated 12.12.1995 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dismissing the appellant''s appeal and an order dated 16.6.1996 by which it dismissed the petitioner''s application u/s 35G requiring it to refer an alleged question of law for the opinion of the Court.

2.I have heard Shri Dilip Gupta, learned Counsel for the petitioner. No one has appeared on behalf of Union of India.

3. As regards the rejection of the application u/s 35G the petitioner''s remedy lies under Sub-section (3) of Section 35G by moving an appropriate application before the High Court. No writ petition on that aspect of the matter, therefore, lies.

4. As regards the appeal the facts are that the petitioner set up a cement factory and started manufacturing cement somewhere in the year 1980. In the manufacturing of cement it used slag as one of the raw material which was purchased from M/s. Bokaro Steel Ltd. and excise duty was paid thereon. By a Notification dated 4th June, 1979 the Government of India had ordered that the Excise Duty paid on goods used as a raw material or inputs could be adjusted from the Excise Duty payable on the final product. For this a detailed procedure

was laid down in the said notification which provided inter alia that a manufacturer shall give a declaration to the Superintendent of Central Excise having jurisdiction over his factory, indicating the full description of the goods intended to be manufactured in his factory and the full description of the inputs intended to be used; a manufacturer was permitted to take credit of the duty already paid on the inputs which are received by him after submitting the declaration and utilises such credit for payment of duty of excise on the said goods, a manufacturer shall give prior notice to the proper officer before the Excise Duty paid inputs are received in his factory to enable the proper officer to be present at the time of the receipt of the inputs.

5. The petitioner''s case is that it was not aware of the said notification and hence did not take credit for the excise duty paid on the slag. It was after March, 1984 that petitioner came to know of the said Notification and started taking credit for the duty paid on the slag and made a claim for refund of the excise duty paid on the cement to the extent of the excise duty on the slag. This claim which amounted to Rs. 51,47,147.27 paise and supplementary claim of Rs. 1,48,237.66 paise has been rejected by the Collector on the ground that the conditions of prior notice etc. as laid down in the aforesaid notification were not complied with. The Tribunal has also dismissed the petitioner''s appeal for the same reason. The petitioner''s appeal was heard ex parte as no one appeared on its behalf. The petitioner''s grievance is that it was not given any notice of the adjourned date of hearing and it has moved an application for setting aside the ex parte order passed in the appeal which is pending before the Tribunal.

6. Patently, the petitioner did not take any credit for the excise duty paid on slag and paid full Excise Duty on the cement manufactured by it voluntarily as according to its own showing it was not aware of the Notification granting concession. Therefore, there was no question of the petitioner complying with the procedure laid down in the Notification. The petitioner''s case is, however, is that it had submitted various returns to the officer concerned from which the relevant information was available and, therefore, the petitioner should have been granted the refund of the Excise Duty wrongly paid by it.

7. I have considered the submissions made by Shri Dilip Gupta. It is settled law that a person who claims exemption or a benefit under some circular or Notification must comply with the conditions and procedure laid down in the circular of the Notification. In this case admittedly, it was not done. The Notification does not contemplate payment of duty and its subsequent refund. It authorises the manufacturer to himself take credit of the duty already paid on the inputs which are received by him after submitting the declaration. No declaration as contemplated in the Notification was ever submitted nor petitioner took credit for the duty paid on the inputs. Therefore, the Collector was in my view right in rejection the claim for refund and the Tribunal rightly dismissed the appeal.

8. Section 11B of the Central Excises and Salt Act that deals with claim for

refund of duty provides that the claimant has to establish that the incidence of such duty has not been passed on by him to any other person. Payment of Excise duty on inputs is an expenditure that is accounted for the cost of the production of the goods and the incidence of such expenditure is passed on to the ultimate consumer. The petitioner at no stage claimed that the incidence of the Excise Duty was not passed on to the persons who purchased cement from it.

9. Reliance is placed on Bombay Chemical Pvt. Ltd. Vs. Collector of Central Excise, Bombay I, Bombay, and Formica India Division Vs. Collector of Central Excise and Others, . Both these cases relate to different facts and circumstances and are not germane to the present case.

10. For the above reasons, this Writ Petition has no force and is dismissed in limine.

