(1996) 11 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 332 of 1994

U.P. State Cement Corporation Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (1997) 69 ECR 299 : (1998) 98 ELT 48

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

Bench : Single Bench

Advocate : Dilip Gupta, for the Appellant; Anil Kumar, instructed by U.N. Sharma, Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India the petitioner, U.P. Cement Corporation Ltd., a Corporation of the State of U.P. challenges the order dated 28-2-1990, copy of which is Annexure-3 to the writ petition passed by respondent No. 4 raising a demand of Rs. 3,72,519.90 for the period January, 1986 to November, 1995 u/s 11A of the Central Excises and Salt Act and an order dated 30-12-1993, a copy of which is Annexure-8 to the writ petition, passed by the Customs Excise and Gold (Control) Appellate Tribunal by which it dismissed the petitioners'' appeal against the aforementioned order. The petitioner manufactures cement and for the said purposes it has set up plants for manufacture of cement clinker at chuck and Dalla which is then transported to Chunar Plant where the cement is actually manufactured. The demand was raised in respect of the alleged excessive losses of clinker during transport. The petitioner''s case is that the losses were natural and the demand was raised after the expiry of the period prescribed u/s 11A of the Act. Several such orders were passed for different periods and the matter came to this court in several writ petitions being writ petitions No. 1785 to 1791 of 1993,915 and 916 of 1995 which were decided by me vide judgment dated 18-12-1995 and were allowed holding that the losses were natural and since there was no fraud collusion, willful suppression of the facts etc., the demand could not be raised after the expiry of the period of limitation prescribed u/s 11A of the Act. The writ petition was therefore, allowed and the impugned orders were quashed. That order has been followed in other writ petition being writ petitions No. 1106 of 1994 and 1774 of 1993.

2. I have heard Shri Dilip Gupta, learned Counsel for the petitioner and Shri Anil Kumar, holding brief of Shri U.N. Sharma, learned Chief Standing Counsel for the Union of India. It is agreed that the controversy stands settled by this Court by the said judgment dated 18-12-1995. Following the said judgment, the present writ petition is allowed and the impugned orders dated 28-2-1990, copy of which is Annexure 3 to the writ petition and dated 31-12-1993, copy of which is Annexure 8 to the writ petition, are hereby quashed and the demand of Rs. 3,72,519.90 raised against the petitioner by Additional Collector, Central Excise, Allahabad is hereby quashed, parties shall bear their own costs.

