

Collector of Central Excise Vs. Ga

Collector of Central Excise Vs. Ga

SooperKanoon Citation : sooperkanoon.com/12651

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-1998

Reported in : (1998)(99)ELT515TriDel

Appellant : Collector of Central Excise

Respondent : Ga

Judgement :

1. Commissioner of Central Excise, Delhi-I has filed this Reference Application for referring the following questions to the Delhi High Court in terms of Section 35G of the Central Excise Act, 1944.

"(i) Whether it is obligatory upon the Deptt. to cite reference to the orders relied upon.

(ii) Whether a decision given by a collateral Bench, involving identical issue, is binding for subsequent matters and if the Bench differed with the earlier view the matter should have been referred to a larger Bench and since the same was published in 1944, the same was deemed to have been known." 2. The reference application arises from the Tribunal's Misc. Order No.M/137/97-NB dated 7-7-1997 rejecting an ROM application filed by the CCE, New Delhi against its Final Order No. A/112/97-NB dated 9-1-1997 [reported in 1997 (92) E.L.T. 696 (Tribunal)] by which the Department's Appeal against the Order-in-Appeal of the Commissioner (Appeals) Nos.

255-256/CE/ DLH/92 dated 30-4-1992 was rejected and the Commissioner (Appeals) order dated 30-4-1992 was upheld.³ In the present application the Commissioner has contended that the Tribunal had by an earlier Final Order (Final Order No. A/1721/96-NB) dated 2-7-1996 involving the same party upheld the Department's appeal involving a similar issue and had held that the assessee being merely a manufacturer and not an exporter the benefit under Rule 57F(3) would not be available to the party. In the ROM application filed on 21-5-1997 the Department had prayed that since by an earlier Final Order (Final Order No. A/1721/96-NB) dated 2-7-1996 a Collateral Bench had held that the benefit of Rule 57F(3) will not be available to the party, the same would be binding on the Bench in subsequent matters and if a Bench differed with an earlier Bench order the matter should have been referred to a Larger Bench.

4. It is seen that Bench by its Misc. Order No. M/137/97-NB dated 7-7-1997 had rejected the ROM application on the ground that Appellant Collector had neither made any reference to any earlier decision of the Tribunal in the appeal nor did the records indicate any such decision.

The Departmental Representative who appeared before the Bench had also not brought to its notice that there was already certain judgments of the Tribunal in favour of the Department. The Bench therefore held that since there was no reference to the orders relied on by the Deptt.

there was no mistake apparent on the face of the record.

5. Appearing for the Applicant Commissioner in the present Ref.

application Shri P.K. Jain, SDR submitted that the Bench's observation that since the Department had not brought the decision given by a collateral Bench to its notice there was no mistake apparent on the face of the record has raised an important question of law needing reference to the Hon'ble High Court under Section 35G. He submitted that the decision given by a collateral Bench of the Tribunal should normally be binding on another Bench. If a Bench differed from the order of another collateral Bench the normal course would be to refer the question to a Larger Bench. It was not open to a Bench to reject an ROM application on the

ground that the earlier decision was not brought to its notice. He also contended that the obligation to follow an earlier decision existed independent of the decision being brought to the notice of the Bench.

6. We observe that the Tribunal had in *CCE v. U.P. State Sugar Corporation Ltd.* [1987 (29) E.L.T. 475] held that the question that an earlier order of the Tribunal was not followed in subsequent case would not give rise to a question of law for reference to the High Court when the earlier decision was not cited during the hearing. In the instant case also the question of law sought to be referred is relating to whether an earlier order ought to have been followed by the Tribunal even when it was not cited before the Bench at the time of hearing.

Further, in *Collector v. Hindustan Aeronautics Ltd.* [1991 (37) E.C.R.354] the Tribunal had held that where the question was neither argued at the time of hearing of Appeal on merits nor were they considered, no question of law for reference to the High Court arose. In *Collector v. Asvatic Oxygen* [1986 (25) E.L.T. 379] the Tribunal had held that reference application will not be maintainable when the particular case law affecting the Appellate's Tribunal's decision was not cited during personal hearing. In *Collector v. Binny Ltd.* [1985 (22) E.L.T. 92] the Tribunal had held that even if a judgment had been rendered by the Tribunal per incuriam the finding of the Tribunal, even if erroneous, would not be a matter for reference to High Court.

7. Having regard to the above discussion we find that no question of law that can be referred to the High Court has arisen in this case. The question whether there is an obligation on the Department to cite reference to the orders relied upon is not a question of law. It is a well settled principle that any applicant who files an application before any judicial or quasi-judicial authority has to cite the authority relied on. It is not the obligation of the judicial or quasi-judicial authority to search for relevant case law on the point even if none is cited before it either by the Appellant or its Representative.

8. We therefore find no merit in this Reference Application. The same is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com