Collector of Central Excise and Vs. Lal Chand Anand and ors.

Collector of Central Excise and Vs. Lal Chand Anand and ors.

SooperKanoon Citation : sooperkanoon.com/2292

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-1985

Reported in : (1986)(23)ELT530TriDel

Appellant : Collector of Central Excise and

Respondent : Lal Chand Anand and ors.

Judgement :
1. During the pendency of some appeals (seven in number), before Special Bench B, a point of law, which was common to all of them; namely, as to which period of limitation would be applicable in a given case for the issuance of notice for recovery of short levy or non-levy demand, was referred for the opinion of a Larger Bench by the concerned Special Bench. The appeals remained pending in the said Bench and the point referred for the opinion of the Larger Bench was decided, along with other points which arose during the hearing before the Larger Bench, by Order dated 7-6-1984.

2. No appeals were disposed of by the said Order, which in fact remained pending in the Special Bench, as already noted. The concluding para of the Order only says that points raised and discussed were answered in the manner stated therein. The points so determined by means of the Order under reference were returned to the Bench that had made the reference to the Larger Bench, for disposal of the appeals by them. It was specifically mentioned that this Order was only by way of resolving questions on a point of importance for the Benches, in view of some conflicting views, and that Larger Bench was only rendering opinion

on a given point, and the appeals will be disposed of by the concerned Bench and that the points answered by the Larger Bench shall get merged in such a final order, which would eventually be passed by the concerned Bench.

3. As the Larger Bench Order came to be recorded on a reference made commonly from seven appeals, which related to different Collectorates, three of the Collectors seem to have had some reservations on the opinion recorded by the Larger Bench, and have sought reference on point/points of law, which according to them arise from the Order dated 7-6-1984, to High Courts of their jurisdiction, requiring the Tribunal to draw statement of law on those points.

4. The Reference Applications are : (1) by Collector of Central Excise, Meerut, being; Reference No. 92/84-B (Collector of Central Excise, Meerut v. Lal Chand Anand, Ghaziabad) ; (2) Reference No. 98/84-B, by Collector of Central Excise, Ahmedabad : collectively in three appeals pertaining to (i) M/s. Sirhind Steel Rolling Mills, Ahmedabad, (ii) M/s. Malhotra Steel Industries ; and (iii) M/s. Malhotra Steel Industries, Ahmedabad ; and (3) Reference No. 32/85-B by Collector of Central Excise, Bolpur : re : Collector of Central Excise, Bolpur v.Durgapur Steel Plant.

5. All these Reference Applications have been taken up together for hearing by the same Larger Bench which had earlier heard the points referred by Special Bench B, and recorded the Order, in relation to which these applications have been made. Shri V. Laxmikumaran represented the petitioner Collectors whereas respondents in Reference Application at Sr. No. 1 above were represented by Shri H.S. Sharma, Advocate, and respondents in the Reference Application at Sr. No. 2 by Shri Gopal Prasad, Consultant, whereas none appeared for respondents in third application.

6. It was noticed that two of the Reference Applications have not been filed within the requisite period of 60 days as stipulated by Section 35-G (1) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). However, the third is found to be within time. So far as the Reference Application filed by Collector, Ahmedabad covering three parties is concerned, this has been filed, beyond even the stipulated extended period of 30 days ; i.e., after a total period of 90 days from

the date of receipt of the order by the concerned Collector. The first one is within the extended period of 30 days, though beyond the normal period of 60 days. There is a prayer for condonation, on the plea that the matter was being examined on points of law, and the process of decision-making took some time, and that in the meantime, the period of 60 days expired.

7. So far as the question of condonation of delay is concerned, in the circumstances stated, we feel inclined to accede to the request of the petitioner, but the Reference Application filed by Collector, Ahmedabad has been filed after expiry of period of 90 days. Our discretion being confined to a period of 30 days, beyond the initial period of 6C days ; this Reference Application, pertaining to three appeals, has, thus, to be rejected at the threshold as being barred by time. However, under the circumstances, we condone delay in the case of first Reference Application ; namely, in the case of Collector of Central Excise, Meerut v. Lal Chand Anand, as that Application has been moved before the expiry of the total period of 90 days.

8. We now proceed to take up the two Reference Applications. The Bench at the outset put it to Shri V. Laxmikumaran, SDR, as to whether the Order of the Larger Bench, which has occasioned the Reference Applications, falls within the category of an order as contemplated under Section 35G(l) of the Act. He very fairly conceded, after comparative reading of Sections 35-C and 35-G that the order, within the meaning of Section 35-G(l), under which the Reference Applications have been moved, is an order which finally disposes of an appeal. In face of this situation, he had no arguments to offer. He, rather in his usual candid manner, brought to our notice two judgments of Allahabad High Court in matters arising out of reference applications to the Income Tax Appellate Tribunal, under Section 66 (1) of the Income-tax Act, 1922. References, for statement of a case to the High Court on a point of law, which may be sought by either of the two parties, have been provided under that Act only in relation to orders passed under Section 33 (4) of the said Act. The provisions of Section 33 (4) are in substance analogous to the provisions of Section 35-C of the Act.

9 We consider it expedient to reproduce the two provisions to facilitate a comparative study. Section 33 (4) of the Act reads as under :- "The appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders there on as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner." "The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order, with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary." 11. The provisions may be differently worded but substantially both the provisions coyer orders which finally dispose of an appeal, filed before the respective Tribunals. While considering the Reference applications, filed under Section 66 (1) of the Income-tax Act, Allahabad High Court in two cases reported as : (1) Commissioner Income-tax, U.P. v. Shamsher Jang Bahadur [1951 (20) Income Tax Reports p. 31]; and (2) Munna Lal and Sons v. Commissioner, Income Tax, U.P.[1965 (55) Income Tax Reports p. 508] held that reference application to the Tribunal under that Act could lie only on orders, finally disposing of an appeal, and in both the cases interim orders having been passed by the Tribunal, the same were held to be not maintainable.

12. We find that the Reference Applications before us, face a similar situation. Section 35-G(l) of the Act clearly indicates that Reference Applications under that provision, lie only out of orders passed under Section 35-C of the Act. We have noted that under this provision, only an order which finally disposes of an appeal, is covered. It is, thus, a case, where the Reference Applications have to be held not entertainable.

13. Shri H.S. Sharma, appearing for one of the respondents ; namely, M/s Lal Chand Anand, however, tried to support the prayer for reference on the ground that the point which was before the Larger Bench stood finally disposed, and that concerned Special Bench is bound by the said order, and to that extent the order has to be construed as a final order, although we observe that in reply to the reference application, filed under his signatures, Shri Sharma took up the position

that reference application was not maintainable and liable to be rejected.

Since he invited our attention to the cross-objection filed by him subsequently, availing of the provisions of Sub-section (2) of Section 35-G, he was allowed to argue on this point, but we nevertheless feel that nothing turns on this as an order within the contemplation of Section 35-C is an order which finally disposes of an appeal, and not specific point ; particularly when, it is nobody's case that the appeals stood disposed of by the Larger Bench Order. It is rather conceded that the appeals remained duly pending before Special Bench B, and after the point referred to Larger Bench was answered, individual appeals were to be taken up separately on facts.

14. Shri Gopal Prasad, Consultant appearing in Reference Application at No. 2, argued on the other hand that apart from the fact that reference directed against his parties was barred by time, the same was not otherwise maintainable on the ground already noticed by the Bench ; namely, that the order in relation to which Reference Application has been filed, was not an order under Section 35-C inasmuch as it does not finally dispose of any appeal.

15. On a careful consideration of the position, and recapitulating what has been discussed above, we hold that the present Reference Applications are not maintainable. We accordingly dismiss all the three Reference applications.