

Luxco Electronics Vs. Union of India (Uoi) and ors.

Luxco Electronics Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/471973

Court : Allahabad

Decided On : Aug-28-1987

Reported in : 1988(33)ELT641(All)

Judge : V.K. Mehrotra and ;D.S. Sinha, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. W.P. No. 622 (Tax)/87

Appellant : Luxco Electronics

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : N.B. Singh, Chief Standing Counsel

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Judgement :

1. The petitioner had come earlier to this court in a writ petition under Article 226 of the [Constitution of India](#) which was disposed of by us on 22nd May, 1987 [1987 (31) ELT 883 (All.)]. The grievance of the petitioner was that the petitioner's plea for dispensing with the requirement of deposit of duty etc. of a precondition for consideration of the appeal filed by the petitioner against the order made by the Collector, Central Excise, had been considered in accordance with the law. The specific grievance of the petitioner was that the plea that the demand was barred

by limitation, they had taken specifically, had not been considered by the Tribunal even in a prima-facie before passing the orders on the application made by the petitioner. While allowing the writ petition we had directed the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi to re-consider the petitioner's application in accordance with the law. We had observed that the question about the demand being barred by limitation was to be examined by the Tribunal on its merit, though in a prima-facie manner. The Tribunal has again considered the matter. By its order of July 21, 1987 it modified its earlier order partly by giving some further relief to the petitioner. It however, directed that the petitioner should deposit a sum of Rupees One Lakh in cash towards the demand raised against him. The petitioner has again approached this court in the present writ petition. The grievance of the petitioner is that inspite of specific direction of this court the Tribunal has failed to record even prima-facie conclusion about the plea raised on its behalf and the demand under Challenge was barred by limitation.

2. We have heard Sri A.P. (Mathur, learned counsel for the petitioner and Sri N.B. Singh, Chief Standing Counsel for the Union of India. Copy of the order of the Tribunal is appended as Annexure A8 to the writ petition while copy of the order passed by this Court is appended as Annexure - A7 to the writ petition. We find that the Tribunal had, after noticing the rival contentions, inter-alia, about the plea relating to demand against the petitioner being barred by limitation, not recorded any conclusion even in prima-facie manner about it. The Tribunal has observed in para 6 of its order that :

'On the question of applicability of Section 11A, we are of the view that considering the implications involved in the arguments, a final decision can be taken only after a proper scrutiny and analysis of the provisions. The Tribunal has at this stage, to take into account the financial hardship besides the prima-facie case....'

Then the Tribunal proceeded to examine the question of hardship and came to the conclusion that the material produced before it, the petitioner appellant before the Tribunal, had failed to impel it to take the view that it was because of undue hardship to the petitioner. Having, however, regard to all the factors the Tribunal directed that the petitioner should deposit Rupees one lakh apart from the security

for the remaining amount.

3. Formally, we could have not interfered with the order passed by the Tribunal but for the fact that in spite of our specific direction that the Tribunal should record a conclusion, even though in a prima-facie manner, on the question of demand being barred by limitation, the Tribunal has failed to do so. We, therefore, set aside the order of the Tribunal dated July 21, 1987 and direct it to reconsider the matter in the light of our order passed on May 22, 1987 [1987 (31) ELT 883 (All.)] expeditiously. The writ petition is disposed finally with the aforesaid observations.

4. Let a copy of this order be made available to the parties within a week on payment of usual charges.

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