Lml Ltd. Vs. Assistant Collector of Central Excise

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Court : Allahabad

Decided On : Apr-06-1990

Reported in : 1990LC361(Allahabad); 1990(50)ELT507(All)

Judge : M.M. Lal and ;Giridhar Malaviya, JJ.

Acts : Central Excises Act, 1944 - Sections 11B

Appeal No. : Civil Misc. Writ Petition No. 348 of 1990

Appellant : Lml Ltd.

Respondent : Assistant Collector of Central Excise

Judgement :

1. Vide an order dated 27-11-1989 the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi had re-affirmed the appellate order and dismissed the appeal filed by the Collector of Central Excise, Kanpur against the same and passed a definite order that L.M.L. Ltd. (Scooter Division), the petitioner before us, would be entitled to claim refund on the basis of redetermined assessable value, for the period of six months preceding Sept. 24,1984 in terms of Section 11B of the Central Excises & Salt Act, 1944 and also to claim refund with effect from 4-10-1985 on differential excess duty paid by them as a result of treating the sales to the authorised representatives in parts other than U.P. as wholesale sales. Inspite of the said clear order of the Tribunal the respondents before us did not comply with the said order. However when the petitioner, feeling aggrieved, moved the

Assistant Collector, Central Excise, Kanpur the respondents contested the plea and the Assistant Collector ultimately rejected the refund claim amounting to Rs. 52,84,784.31. Prima facie we are of the opinion that after a clear order of the Tribunal to make the aforesaid refund to the petitioner, the Assistant Collector, Central Excise had no jurisdiction or right to refuse the said refund claim. In case the respondents had any grievance against the order passed by the Tribunal and wanted to challenge the same then the only remedy available to the respondents was to challenge the said order of the Tribunal before the Supreme Court. However, the same was admittedly not done. Therefore, we issue an interim writ of, mandamus and direct the respondent Nos. 1 and 2 to comply with the aforesaid order dated 27-11-1989 passed by the Customs, Excise and Gold (Control) Appellate Tribunal and refund to the petitioner the excess duty paid by the petitioner on the basis of redetermined assessable value for the period of six months preceding September 24,1984 in terms of Section 11B of the Central Excises & Salt Act, 1944. We also direct the respondents to pay to the petitioner in accordance with the said order the differential excess duty paid by them as a result of treating the sales to the authorised representatives in parts other than U.P. as wholesale sales with effect from 4-10-1985. The said refund shall be made within two months.

2. This interim order shall be subject to the final orders which may ultimately be passed in this writ petition.

3. In the meanwhile the operation of the order dated 9-3-1990 passed by the Respondent No. 1, a copy of which is Annexure-7 to this petition, shall remain stayed.