Ravindra and Co. Vs. Cegat

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Court : Allahabad

Decided On : Dec-18-1996

Reported in : 1998(98)ELT305(All)

Judge : M.C. Agarwal, J.

Acts : Central Excise Act, 1944 - Sections 35F; Constitution of India - Article 226

Appeal No. : Civil Misc. Writ Petition No. 837 of 1996

Appellant : Ravindra and Co.

Respondent : Cegat

Advocate for Pet/Ap. : Somesh Khare, Adv., i/b., ;Ashok Khare, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

M.C. Agarwal, J.

1. By this petition under Article 226 of the Constitution of India the petitioner challenges an order dated 16-7-1996, copy of which is Annexure '7' to the writ petition. The said order reads as under :-

'By the present application the applicants have come up for the stay of the order. Sri G. Shiv Dass, the learned advocate appearing for the applicants submits that through the lower authorities have classified the goods under Chapter Heading 24.04 but have not yet quantified the amount of duty payable by classifying the goods under this Chapter heading. He also submits that there is no penalty levied on the applicant. Sri A.K. Madan the D.R. concedes that the demand has not been quantified so far in accordance with the order.

Heard the submissions of the learned Counsel and the learned DR. We find that under Section 35F powers have been given to the Tribunal to stay the payment of duty and fine. In the instant case we find that neither the duty has been quantified nor is there any penalty. In the circumstances we find that the stay application is infructious and the same is dismissed.'

2. I have heard Sri Somesh Khare holding brief from Sri Ashok Khare, Counsel for the petitioner.

3. An order has been passed by the Asstt. Collector, Central Excise determining under that item the petitioner's products shall be subjected to Central Excise and ordering the determination of the amount payable by the petitioner. Against the said order the petitioner preferred an appeal to the Commissioner (Appeals), Central Excise which was dismissed by order dated 14-3-1996, against which the petitioner has preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. In that appeal an application praying for staying the operation of the order of the Commissioner of Central Excise dated 14-3-1996 was made. It is that application that has been dismissed by the impugned order reproduced above.

4. As is evident, the order passed by the Commissioner (Appeals) was an order dismissing the appeal. No useful purpose was going to be served by staying the operation of that order. No prayer was made for staying the operation of the order passed by the Collector, Central Excise. Further, no demand having been raised against the petitioner, there was no legal justification for staying the order passed by the Commissioner.

5. For the above reasons, I do not find any cause for interference under Article 226, I do not find any case for interference under Article 226 of the Constitution of India. The writ petition is dismissed in limine.