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Tony Electronics Ltd. and anr. Vs. Commissioner Central Excise

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Court : Allahabad

Decided On : Nov-16-1999

Reported in : 2000(67)ECC493

Judge : M.C. Agarwal ; and S. Rafat Alam, JJ.

Appeal No. : Civil Misc. Writ Petition Nos. 162-163 of 1999

Appellant : Tony Electronics Ltd. and anr.

Respondent : Commissioner Central Excise

Advocate for Def. : Sri. Vikram Gulati

Advocate for Pet/Ap. : Sri. Rajesh Kumar

Disposition : Petition allowed

Judgement :
ORDER

M.C. Agarwal, J.

1. These two petitions filed by the petitioners named above challenge the identical orders dated 9.2.1999 passed by the designated authority, i.e. the Commissioner Central Excise, Meerut-2 rejecting the respective declarations filed by the petitioners under the 'Kar Vivad Samadhan Scheme, 1998' as contained in

Chapter IV of Finance (No. 2) Act. 1998.

2. We have heard Sri Rajesh Kumar learned counsel for the petitioner and Sri Vikram Gulati learned Standing Counsel for the respondent.

3. There were certain tax due from the petitioners under the Central Excise Act, in respect of which they opted to avail the benefit under the aforesaid Scheme and filed the requisite declarations. According to Section 95 of the Act, the Scheme was not to apply in certain cases and one of the categories of such cases is mentioned in Sub-clause (ii)(c) as under:

(c) in a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court or no application for revision is pending before the Central Government on the date of declaration made under Section 88.

4. Both the petitioners were contesting the dues and had filed appeals before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi which were pending. The issue involved in the aforesaid appeals involved a question of law that was involved in various other appeals and a group of certain appeals was referred for decision to a larger Bench of the Tribunal. A copy of the judgment of the larger Bench has been placed in the paper book as Annexure-4 at page 37. The larger Bench of the Tribunal decided the question and observed as under:

All the appeals which have been kept pending by the various Benches of this Tribunal in view of this larger Bench reference on the issues considered in this case shall be disposed of by the respective Benches in the light of our observations above.

5. Admittedly, the respective appeals of the two petitioners were not before the larger Bench and no final orders disposing those appeals was passed before the petitioners filed their respective declarations. By the impugned order the Commissioner has taken the view that the matter relating to the petitioners stands finally settled by the order of the larger Bench dated 17.11.1998. The ground on which the declarations of the petitioners have been rejected has been stated in the

impugned order as under:

The case in respect of which you have filed the declaration under KVSS, 1998 had already been finally settled vide Final Order No. A-970-988/98-NB (DB) dated 17.11.1998 passed by the larger Bench of Customs, Excise and Gold (Control)Appellate Tribunal, New Delhi.

The declaration filed by you is, therefore not competent under the Scheme andthe same is accordingly rejected.

6. In the counter-affidavit filed on behalf of the respondent it is stated as under:

That the contents of para 7 of the writ petition are not admitted. Appeal filed by the petitioner before the Hon'ble Tribunal involved only one main question i.e. whether credit on inputs lying in stock and contained in final product is required to be reversed if the final product becomes exempt from payment of duty. The Commissioner (Appeal) in his Order-in-Appeal No. 64-65 CEX MBT 97 dated 15.01.97 has discussed and decided only this question. Even the party in their memorandum of appeal before the CEGAT has contested on this point Viz. The dispute in present case is as to whether the credit taken by the appellants on the inputs when the final product was chargeable to duty can be recovered subsequently when the final product became chargeable to nil rate of duty by invoking the provisions of Rule 57-O (para B under caption grounds of appeal).

7. Thus, admittedly, after the order of the larger Bench, the respective appeals of the petitioners do not seem to have been heard and no order disposing them of has been passed and no such order is mentioned in the aforesaid para 4. Thus, the appeals of the petitioners had not been disposed of and did not appear to have been disposed even till date and it cannot be said that simply because the larger Bench of the Tribunal decided the question of law that was involved in the appeals filed by the petitioners also the said appeals stood automatically disposed of. In fact and in law those appeals continued to be pending and, therefore, the declaration, filed by the petitioners could not be rejected on the ground set up by the Commissioner in the impugned orders. The Commissioner's order rejecting the declaration, therefore, is illegal and is liable to be quashed.

8. In the result, these writ petitions are allowed and the impugned orders dated 9.2.1999 are hereby quashed. The designated authority will now dispose of the same in accordance with law. The petitioners will get the costs of these writ petitions that we assess as Rs. 1500 in each case.

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