

**Collector of Central Excise Vs. Hydraulics Ltd.**

**Collector of Central Excise Vs. Hydraulics Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/537](http://sooperkanoon.com/537)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-29-1983

**Reported in :** (1984)(16)ELT254TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Hydraulics Ltd.

**Judgement :**

1. The Collector of Central Excise, Madras through this reference application purporting to be under Section 35-G(I) of the Central Excises and Salt Act, 1944 (hereinafter called the Act), requires the Appellate Tribunal to refer to the High Court two questions of law which are set out in Serial No. 8 of the application for reference.
2. The application for reference has been filed beyond the time prescribed for such application. An application for condonation of delay in terms of proviso to Section 35 G(I) has also been filed along with application for reference.
4. At the date of hearing, the representative of the non-applicants stated that they had not been served with the copy of the application or other documents and requested that they may be supplied with the same before the matter was heard.
5. The Tribunal felt a doubt about the maintainability of the application filed by the applicant. It was felt that before the non-applicants after being provided with all the papers take action as provided in Sub-section (2) of Section 35-G of the Act, the

applicant should be called upon to satisfy the Tribunal about the maintainability of the application filed by him and on the question of condonation of delay in filing the application. Sh. V. Lakshmi Kumaran, Senior Departmental Representative representing the applicant was therefore heard on this aspect of the matter.

6. Sh. V. Lakshmi Kumaran submitted that the order in question decided the appeal mainly on the basis of that the show cause notice had not been issued under Rule 9(2) of the Central Excise Rules and that the time-limit for recovery of the duty had already expired. According to him the order was not an order relating among other things to the determination of any question having relation to the rate of duty of Excise. He, therefore, submitted that as the order stood, an application for reference under Section 35-G(I) of the Act was maintainable. He, however, conceded that the question raised before the Bench related to the determination of rate of duty of Excise on goods in question, and that the Bench had in fact gone into the question in detail. It was also conceded that the appellants as well as the respondent had submitted detailed arguments regarding rate of duty charged on the goods in question namely Piston and their eligibility to exemption from duty under Notification No. 99/77-C.E. or alternatively under Notification No. 153/77-C.E.7. From the foregoing and the reading of the order in question, there can be no doubt that the issues involved in the order related to applicability of Notification numbers 99/77-G.E. and 153/77-C.E. and thus to rate of duty. The order cannot be read piecemeal, merely because issues were decided on the applicability of rule 9(2) or rule 10 of the Central Excise Rules and in favour of the non-applicants. On the ground of limitation would not mean that the order ceased to be one relating to determination of the question having a relation to the rate of duty. If the finding on limitation had been adverse to the appellants, it would have been necessary to go in detail into the question of rate of duty and the applicability of the notifications. It was because the appeal involved issues related among other things to the determination of question having a relation to the rate of duty of Excise that it was heard by a Special Bench consisting of three Members constituted under Sub-section (2) of Section 35-D of the Act. Section 35-G(I) is clearly not applicable to an order relating among other things to the determination of any question having a relation to the rate of Excise duty. The remedy available to the applicant would be one of appeal under Sub-section (b) of Section 35-L of

the Act. The application for reference filed by the applicant in view of the foregoing is clearly mis-conceived and not maintainable.

8. We may also deal with the application for condonation of delay in filing the application for reference. To say the least, the application is vague. It does not set out any particulars. It also does not set out the necessary facts and particulars from which it may be possible to conclude that there was sufficient cause for the applicant for not making the application for reference within the prescribed time. All that the applicant says is that delay was due to Inter-ministerial reference to Local Branch Secretariat of Ministry of Law. It is not clear as to when the reference was made and when it was returned to the applicant. Besides, it is well-settled that expression sufficient cause cannot be constituted too liberally merely because party in default is Government. No distinction can be made between a private citizen and a State in the matter of condonation of delay. The delay in making an application for reference has not been explained satisfactorily, and on the available material it cannot be said that the applicant has satisfied the Tribunal that he was prevented by sufficient cause from presenting the application for reference within the specified period.

The applicant cannot therefore get the benefit of proviso to Sub-section(i) of Section 35-G of the Act.

9. As a result, the application for reference is rejected both on the grounds of being not maintainable and limitation.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**