Him Cables (India) Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-1994

Reported in : (1994)(73)ELT399TriDel

Appellant : Him Cables (India)

Respondent : Collector of Central Excise

Judgement :

1. This is an application under Section 35G CESA, 1944 filed with reference to the Tribunal's Order No. A/454/90-NRB passed in Appeal No.E/3329/88-NRB.2. The original application was neither in the proper form nor the questions were properly framed. Attested copies of required documents were also not filed.

4. The Tribunal's order shows that the case was not contested on merits but a lenient view was requested. After hearing, the fine and penalty were reduced by the Bench order with reference to which this application has been filed, mainly on the point regarding mens rea that is whether it was as essential ingredient of Rule 173Q and the applicability of Rule 173Ql(b) to the facts of the case. The matter was heard; and due to difference of opinion between the members it was referred to a third member; And in view of the majority opinion further action was required to be taken in terms of Rule 34 of the CEGAT procedure rules and Chapter 16 of the CEGAT manual (Judicial) and a hearing was fixed in the light of paras 16.01 read with 16.03 of Chapter 16. However no one appeared for the applicants side in spite of notice.

5. The certified copies of documents required in terms of para 16.04 of the manual were also not received. The Registry was therefore directed to issue a notice to the applicants in terms of the aforesaid provisions.

6. A notice was issued accordingly but neither the applicants nor their advocate responded. Hence another notice was issued to the appellants to the effect that the Bench may also consider dismissal of the application if the prescribed procedure is not followed and they do not associate with the proceedings and do not file the required documents or/and English translation of those in vernacular. In spite of it the certified copies of the documents required to be annexed and forwarded with the statement as per prescribed procedure were not filed. Further no one appeared on behalf of the applicants on 15-6-1994 when the matter was called. No compliance was even otherwise made with the directions already issued.

7. A question therefore arises as to what is the proper course in the above circumstances.

8. It is observed in this connection that in a similar situation the Hon'ble High Court of Rajasthan had occasion to observe, inter alia, in the case of C.I.T. v. Poonam Chand Manmal Trust reported in 1988 (71) I.T.R. 153 that the Tribunal has a discretion in the matter of sending the statement of the case without annexures. Hence the Tribunal can refuse to forward a statement of case without annexures to the High Court. The Bombay High Court has gone one step further in the case of C.I.T. v. Johnfowler (I) Ltd. reported in 1988 (71) ITR 150 and returned the reference to the Tribunal directing that the Tribunal shall not send a statement of the case simpliciter to the High Court unless the annexures are supplied by the applicant, and if the applicants fails to supply the annexures, the Tribunal can revoke the order of reference by reasons of such failure.

9. Since the applicants have refrained from associating with the concluding stages of the proceedings and neither complied with the prescribed procedure nor caused appearance in spite of repeated notices it appears that they have since lost interest in continuation of these proceedings or furtherance thereof; as such in the light of the ratio of the judgments of the Rajasthan and Bombay High Courts in the

cases cited above we decline to forward the statements.