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Medopharam Vs. Superintendent of Central Excise, Madras

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Court : Chennai

Decided On : Dec-14-1994

Reported in : 1995(77)ELT524(Mad)

Judge : K.A. Swami, C.J. and ;Somasundaram, J.

Acts : Central Excise Act, 1944 - Sections 35A, 36 and 36(1)

Appeal No. : Writ Appeal No. 1185/94

Appellant : Medopharam

Respondent : Superintendent of Central Excise, Madras

Advocate for Def. : Shri K. Jayachandaran, Additional Central Govt. Standing Counsel

Advocate for Pet/Ap. : Shri K. Alagiri Swami, ;Senior Counsel, for Shri M. Agni, Advocate

Judgement :

K.A. Swamy, C.J.

1. This Writ Appeal is preferred against the order dated 27-1-1994 passed by the learned singly Judge in W.P. No. 5036 of 1989. In the Writ Petition, the petitioner/ appellant has challenged the show cause notice. The learned Single Judge has gone into the merits of the case and dismissed the Writ Petition. We are of the

view that whenever a show cause notice is issued under the provisions of Central Excises & Salt Act, which provides for adjudicator forum and also right of first appeal to the Collector and second appeal to the CEGAT, exercise of Jurisdiction under Art. 226 of the Constitution is not warranted. In such cases, the exercise of jurisdiction under Art. 226 would amount to by-passing the statutory remedy provided under the Central Excises and Salt Act, which is not just and proper. Even though the Writ petition is pending for a period of more than six years, still we are of the view that the petitioner should be directed to work out its remedies as per the provisions contained in the Central Excises and Salt Act by filing a reply to the show cause notice and it is for the adjudicator forum to decide the same.

Accordingly, modify the order of the learned single Judge, dismiss the Writ Petition with a direction that it is open to the Petitioner to file reply to the show cause notice within a period of one month from today. In that event, the authority, who has issued the show cause notice shall consider the reply and decide the same in accordance with the provisions of the Central Excises and Salt Act, after affording an opportunity of being heard to the appellant/Petitioner.

2. The Writ Appeal is disposed of with the above observation. No costs.

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