Aurelec Trust Vs. Additional Collr. of C. Ex.

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Court : Chennai

Decided On : Oct-20-2000

Reported in : 2001(76)ECC465; 2001(129)ELT35(Mad)

Judge : T. Meenakumari, J.

Acts : Central Excises Act, 1944 - Sections 11A and 35C(2)

Appeal No. : Writ Petition No. 20629 of 1992

Appellant : Aurelec Trust

Respondent : Additional Collr. of C. Ex.

Advocate for Def. : K. Gunasekaran, A.C.G.S.C.

Advocate for Pet/Ap. : T. Ramesh, Adv.

Disposition : Petition allowed

Judgement :
ORDER

T. Meenakumari, J.

1. The writ petition is for the issue or writ of certiorarified Mandamus to call for the records on the file of the second respondent in E/ROM/553/91, E/Ref/Stay/353/91 & E/Ref/75/91-MAS in E/517/88 (Order No. 70/91), dated 25-11-1991 and quash

the orders of the second respondent in E/ROM/553/91 in E/517/88 (Order No. 70/91), dated 25-11-1991 and direct the second respondent to re-dispose the application dated 17-9-1991 presented by the petitioners under Section 35C(2) and to cancel the demand raised by the first respondent in C. No. V/66/15/86-CX Adj./Order No. 1/86, dated 27-6-1986 invoking the proviso to Section 11A of the Central Excises and Salt Act, 1944.

2. The only reason which weighed with the second respondent Tribunal in dismissing the R.O.M. application filed by the petitioner was that there was no mention of the two letters and there was no indication that the two letters relied on by the petitioner were brought to the notice of the Tribunal while passing on the Order-in-Original dated 27-6-1988. Learned Counsel for the petitioner has argued that the findings of the second respondent is erroneous and the letter dated 27-3-1985 in respect of T.I. 68 and T.I. 33D goods along with a letter dated 9-5-1985 has already been brought to the notice of the Tribunal which could be seen from a reading of the Order-in-Original itself. Learned Counsel for the petitioner has argued that there was no suppression of material facts as observed by the first respondent while dismissing the application and consequently the findings of the second respondent that the above said two letters have not been brought to the notice of the first respondent is an error apparent on the face of the record and the impugned orders are liable to be set aside.

3. A reading of the Order-in-Original passed by the first respondent shows that the above-said letters dated 27-8-1983 and 9-6-1985 have been brought to the notice of the authority and the same have been dealt with by the first respondent in the Order-in-Original. Such being the case. It cannot be said that the petitioner has suppressed the material facts. The findings arrived at by the second respondent Tribunal basing on the orders passed by the first respondent in the Order-in-Original is liable to be interfered with and the same is set aside. The matter is remitted to the second respondent Tribunal for considering the matter afresh. The second respondent Tribunal shall pass appropriate orders within a period of three months from the date of receipt of a copy of this order. With the above observations, the writ petition is allowed. No costs, consequently W.M.P. No. 29699 of 1992 is closed.