
Tirumala Seung Han Textiles Ltd. Vs Commr. of C. Ex.

Writ Petition No. 13421 of 2008

Court: Andhra Pradesh High Court

Date of Decision: June 26, 2008

Acts Referred:

Income Tax Act, 1961 " Section 254

Citation: (2010) 17 STR 593

Hon'ble Judges: T. Meena Kumari, J; Ramesh Ranganathan, J

Bench: Division Bench

Advocate: S. Ravi, for the Appellant; A. Rajashekar Redddy, A.S.G., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Meena Kumari, J.

Seeking a writ of certiorari to quash the order dated 9-5-2008 made in E/ROM/103/2007 in E/636 to 641/2006 by

the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, and to direct the Tribunal to dispose of the said

application on merits, the petitioner filed this writ petition.

2. The petitioner is an Export Oriented Unit. The goods of the petitioner worth Rs. 17,96,220/- were confiscated on 10-4-2001 and penalty was

also proposed to be levied, inasmuch as the petitioner was clearing the goods to the Domestic Tariff Area without permission of the Development

Commissioner and also" without payment of duty. The case was adjudicated upon in Order-in-Original No. 56 of 2003 dated 6-10-2003, which

was appealed against by the petitioner and others before the Appellate Tribunal, which passed Final Order Nos. 91 to 97 of 2004, remanding the

matter. Pursuant thereto, the petitioner approached the Settlement Commission, which by order dated 31-3-2005 2007 (220) E.L.T. 707 (Sett.

Comm.) rejected the application filed by the petitioner and, therefore, the respondent had taken up the matter for de novo adjudication and

confirmed the duty of Rs. 78,16,806/-, apart from interest and penalty. Therefore, the petitioner preferred appeals to the Tribunal in CEA Nos.

636 to 641 of 2006. The Tribunal passed order dated 29-6-2007 remanding the matter to the respondent. The petitioner, noticing the mistake,

filed rectification application before the Tribunal in E/ROM/103/2007 in E/636 to 641/2006. On 15-5-2008, the Tribunal rejected the application

observing that the Tribunal cannot pass an order after lapse of six months, even though the application had been filed within time. Hence, the

present writ petition.

3. Heard Mr. S. Ravi, the learned Counsel for the petitioner and Mr. A. Rajshekar Reddy, learned Assistant Solicitor General of India, appearing

for the respondent.

4. It is contended by the learned Counsel for the petitioner that the petitioner had filed the ROM application within time, but the Tribunal erred in

counting the period of limitation by taking into account the period of pendency of the ROM application, which is not in terms of Section 254 of the

Income tax Act. Contending so, he relied on a decision of the Apex Court in Sree Ayyanar Spinning & Weaving Mill Limited v. Commissioner of

Income Tax 2008 (229) E.L.T. 164 (S.C.)

5. On the other hand, the learned Assistant Solicitor General of India has vehemently opposed the relief prayed contending that the Tribunal is

perfectly justified in rejecting the ROM Application and the order cannot be quashed at this stage, more particular in view of the fact that

alternative remedy of appeal to the Apex Court, is available to the petitioner.

6. Admittedly, the ROM application was filed within time. The Tribunal rejected the application on the ground that it cannot pass an order after

lapse of six months. Thus, for the purpose of limitation, the Tribunal has calculated the period of pendency of the ROM. This principle is squarely

covered by the judgment of the Apex Court in Ayyanar Spinning's case, cited supra. Therefore, the matter requires reconsideration by the

Tribunal.

7. Consequently, the writ petition is allowed and the matter is remanded back to the Tribunal for passing orders afresh, after affording an

opportunity to the petitioner, in accordance with law. No order as to costs.