

SUPREME COURT OF

Union of India (Uoi)

Vs.

Hindustan Development Corpn. Ltd.

(S Majmudar and S Kurdukar JJ.)

19.01.1998

ORDER

1. Leave granted.

2. With the consent of learned counsel for the parties, the appeal is heard finally. The short question is whether the learned Single Judge and the Division Bench of the High Court were justified in quashing the show-cause notice which only called upon the respondent to file its counter and reply to the show-cause notice so that the adjudicating proceedings may take place. In our view on the question whether Tariff Item 33-B(ii) of the Tariff Act* applies or Item 26-AA(i-a) applies, requires investigation of available facts. The High Court should not have undertaken the onerous duty of adjudicating upon these questions which were required to be decided on merits by the authorities themselves. Only on the short ground and without going into the merits of the controversy between the parties, orders passed by the learned Single Judge and Division Bench are vacated. Now the show-cause notice will be required to be adjudicated upon on merits. The respondents will be given liberty to file written reply within eight weeks from today. Thereafter the adjudicating authority will decide the question on merits strictly on the basis of evidence led before it without being in any way influenced by the communication dated 20-9-1982 by Superintendent, Central Excise to the respondents or on the basis of any superior authority's order as mentioned in para 33 of the order of the learned Single Judge at p. 291. We also make it clear that the decision shall be rendered by the adjudicating authority strictly on merits after considering the evidence led before it and without being influenced whatsoever by the earlier observations of the High Court. It is also made clear that if adjudication ultimately culminates against the respondent, it will be open to it to file an appeal

before CEGAT and till the decision of CEGAT on appeal, there will be no recovery of the amount even if it is adjudicated upon by the adjudicating authority in these proceedings. The learned counsel for the appellant submitted that if there is any adjudication made by the authority pursuant to the impugned show-cause notice, an appeal would certainly be maintainable before CEGAT. In our view on the peculiar facts of this case only and not as a precedent we have directed that the recovery of the ad judicable amount shall remain stayed till CEGATs decision if at all any occasion arises for the respondent to go in appeal. However, it will be open to the appellate authority, namely, CEGAT to direct the respondent in such an eventuality to give sufficient security as may be directed.

3. The appeal is allowed accordingly. No costs.