

SUPREME COURT OF INDIA

Commissioner of Customs and Central Excise, Ahmedabad

Vs.

Kumar Cotton Mills Private Limited

C.A.No.473 of 2005

(Mrs.Ruma Pal and C. K. Thakker JJ.)

13.01.2005

ORDER

1. Leave granted.

2. The issue in these appeals is the construction of sub-section (2A) of Section 35C of the *Central Excise Act, 1944*. The sub-section, which was introduced on 11-5-2002 by the Finance Act, 2002 provided as under:

"(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed;

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of Section 35B, the Appellate Tribunal shall dispose off the appeal within a period of one hundred and eighty days from the date of such order,

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated."

3. The provision has clearly been made for the purpose of curbing the dilatory tactics of those assesseees who, having got an interim order in their favour, seek to continue the interim order by delaying the disposal of the proceedings. Thus, depriving the revenue not only of the benefit of the assessed value but also a decision on points, which may have impact on other pending matters.

4. The Tribunal which was then known as Customs, Excise Gold (Control) Appellate Tribunal (CEGAT) came to the conclusion that the amendment; did not affect stay orders which were passed prior to the date of coming into force of the amendment and also held that the amendment did not in any way: curtail the powers of the Tribunal to grant stay exceeding six months.

5. During the pendency of the appeal before this Court, the matter was referred to a Larger Bench of the Tribunal. The Larger Bench has by its decision reported in 2004 Indlaw CESTAT 696 upheld the view impugned in this case. The decision of the Larger Bench has not been challenged by the Department being of the view that repeated special leave petition raising the same issue was unnecessary.

6. The sub-section which was introduced in terrorem cannot be construed as punishing the assessee for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, *IPCL v. Commissioner of Central Excise, Vadodara* (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee.

7. The appeals are disposed of.