

[2024:RJ-JP:9941-DB]


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Excise Appeal (EXCIA) No. 75/2018

Commissioner of Central Goods And Service Tax, A-Block, Surya
Nagar, Alwar Rajasthan 301002.

----Appellant

Versus

M/s Jain Poles Industries, Bahala Ka Bas, Delhi Road, Alwar
(Rajasthan).

----Respondent

For Appellant(s) : Mr. Kinshuk Jain, Adv.
For Respondent(s) : Mr. Daksh Pareek, Adv. with
Mr. Arjun Singh, Adv.

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MRS. JUSTICE SHUBHA MEHTA
Order

REPORTABLE

27/02/2024

1. Appellant has preferred this appeal under Section 35G of the Central Excise Act, 1944 aggrieved by the order dated 09.08.2017 passed by Excise & Service Tax Appellate Tribunal.
2. Since an objection to the maintainability of this appeal under Section 35G of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') was raised by the counsel for the respondent, vide order dated 14.07.2023, time was given to the counsel for the appellant to examine the issue with reference to the decision cited by counsel for the respondent in "*M/s Navin Chemicals Mfg. And Trading Co. Limited Vs. Collector of Customs: 1993(4) SCC 320.*"
3. Heard on the question of maintainability of the present appeal before the High Court.
4. It is contended by counsel appearing for the appellant that the judgment referred to by counsel for the respondent i.e. *M/s Navin Chemicals Mfg. And Trading Co. Limited* (supra), has no

applicability to the present case, as that case was with regard to Section 129C of the Customs Act, 1962, whereas the present case pertains to Section 35G of the Act. It is also contended that the said provisions are not *pari materia*, therefore, this judgment would not apply to the facts of the present case.

5. It is contended by counsel for the appellant that SSI Exemption is available only when turnover is less than Rs.1 crore. The respondent has three Undertakings, therefore, they were not entitled to exemptions and SSI Exemptions were withdrawn by the Department. It is also contended that bar as provided under Clause (1) of Section 35G of the Act would not apply and the High Court shall have jurisdiction to entertain the appeal.

6. Counsel appearing for the appellant has placed reliance on "*Sunsuk Industries vs. Commissioner of Central Excise, Mumbai-IV*: **2018 (16) G.S.T.L. 469 (Bom.)**"; "*Annapoorna Re-Rolling (P) Ltd. vs. Cestat, Chennai*: **2018 (14) G.S.T.L. 512 (Mad.)**"; "*Expo-Fyn Electricals & Electronics vs. Commissioner of C. Ex. Jaipur-I*: **2018(8) G.S.T.L. 160 (Raj.)**" and "*Principal Commissioner of Central GST vs. Maniar And Co.*: **2018 (16) G.S.T.L. 85 (Guj.)**".

7. Counsel appearing for the respondent has opposed the appeal and contends that if SSI Exemption is withdrawn, the excise duty would become leviable, therefore, the same would fall within the exception as provided under Section 35G of the Act.

8. Counsel for the respondent has placed reliance on "*Commissioner of Central Excise, Jaipur vs. Electro-Mechanical Engineering Corporation & Ors.*: **2008 (17) SCC 177**" an appeal was filed by the Commissioner Central Excise before the Apex

Court when the benefit of SSI exemption was denied by the Revenue on the ground that respondent had floated two front units in order to fraudulently avail the SSI Exemption.

9. It is argued that appellant at one hand is approaching the Apex Court as there is exception under Section 35G of the Act and on the other hand, appellant is approaching the High Court claiming that the case would not fall under the exception under Section 35G of the Act.

10. Counsel for the respondent has also placed reliance on "*Commissioner of Service Tax, Delhi vs. Bharti Airtel Ltd.*: **CEAC No.8 of 2013 and CM Nos.1975-1976 of 2013. decided on 26.02.2013**" & "*Commissioner of Customs & C. Ex., Goa vs. Primella Sanitary Products (P) Ltd.*: **Misc. Civil Application No.344 of 2001, decided by Bombay High Court on 18.02.2002.**"

11. It is argued that *Primella Sanitary Products (P) Ltd.* (supra) was a case pertaining to Section 35H of the Act, wherein the Bombay High Court held that application filed by the applicant raises issue which relates to the determination of a question having relation to the rate of duty of excise or of the value of the goods for the purposes of assessment and, as such, a reference under Section 35H of the Act is not maintainable.

12. We have considered the arguments and have carefully perused Section 35G of the Act.

13. Section 35G(1) of the Central Excise Act, 1944, reads as under:-

"Appeal to High Court- (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order

relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."

14. A perusal of the above provision reveals that an appeal would lie to the High Court, if the High Court is satisfied that the case involves a substantial question of law, however, appeal would not lie, if the same pertains to determination of any question having relation to the rate of duty of excise or to the value of goods for purposes of assessment.

15. In *Commissioner of Central Excise, Jaipur vs. Electro-Mechanical Engineering Corporation & Ors.* (supra), appeal was filed by the Commissioner of Central Excise, when the benefit of SSI Exemption was denied by the Revenue on the ground that respondent had floated two front units in order to fraudulently avail the SSI Exemption. The said appeal was filed before the Apex Court knowing pretty well that appeal is not maintainable before the High Court. In that case, appeal was entertained by the Apex Court. The Division Bench of the Bombay High Court in *Commissioner of Customs & C. Ex., Goa* (supra) held that a reference under Section 35H of the Act is not maintainable where the issue relates to the determination of a question having relation to the rate of duty of excise or to the value of the goods for the purposes of assessment.

16. We are of the considered view that in the case in hand, SSI Exemption for payment of central excise duty has been granted to the respondent. If this exemption is withdrawn, excise duty would become leviable and consequently, it would be an order relating among other things to the determination of any question having a

relation to the rate of duty of excise. Further, if the exemption is withdrawn, the goods will be valued for the purpose of assessment and thus, it would fall within the exception as provided under Clause (1) of Section 35G of the Act. Similarly, if three Undertakings are treated as one Undertaking, then for the purpose of determination, the value of goods would also be assessed of the three Undertakings together, thus the dispute would pertain to value of goods for purpose of assessment and thus the same would not fall within the jurisdiction of the High Court. There being a specific bar on entertaining of appeal, if the question pertains to rate of duty of excise or the value of goods for the purpose of assessment, the present appeal is not maintainable before the High Court.

17. In view of the above, we are not inclined to entertain the present appeal on the ground of lack of jurisdiction and the same is accordingly, dismissed as not maintainable. Stay application also stands disposed.

(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J