

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

C.E.Appeal.No. 1 of 2004 ()

E/APPEAL NO. 2849/1998 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

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APPELLANT/APPELLANT IN T.A.:

**RAJAN BEEDI COMPANY,
1-4 NO.3/BIRIS/83,
DOOR NO.III/550, KOTHATTUKULAM,
REPRESENTED BY ITS PROPRIETOR, MR. P.V JOHN.**

**BY ADVS.SRI.E.K.NANDAKUMAR (SR.)
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN**

RESPONDENT(S)/RESPONDENT IN T.A.:

**COMMISSIONER OF CENTRAL EXCISE,
COCHIN.**

**BY ADV. SMT.T.D.RAJALAKSHMI (SR.), CGSC
BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC,CENTRAL BOARD OF EXCISE
BY ADV. SRI.JOHN VARGHESE,SC,CENTRAL BOARD OF EXCISE**

**THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY HEARD ON 03-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OKB

“C.R.”

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

C.E.A.No.1 of 2004

Dated this the 3rd day of March, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

- 1.This appeal is against an order of the Appellate Tribunal under the Central Excise Act, 1944; the 'Act', for short. Heard the learned counsel for the appellant and the learned standing counsel for Central Board of Excise and Customs; for short, 'CBEC'.

- 2.While it is argued on behalf of the appellant that the Tribunal erred in law in the matter of adjudication of the appeal before it and had misdirected itself, the learned counsel for CBEC argued that the questions raised do not merit consideration in this appeal.

- 3.Perusing the impugned order of the Tribunal and the quality of consideration therein; we see that, keeping aside the intricate

manner in which the questions of law have been attempted to be projected, the only issue germane for consideration is, the question of fact, as to whether the quantum of beedies was appropriately arrived at for the purpose of passing the demands which were confirmed even through the penalty order. That quantification was essentially to arrive at the value of goods for the purpose of assessment.

4. An appeal under Section 35G of the Act would not lie to the High Court in terms of sub-section 1 of that Section in relation to 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 the purpose of assessment. Any question having a relation to the value of goods for the purpose of assessment goes out of the jurisdiction of the High Court in terms of Section 35G in view of the exclusionary clause provided by sub-section 1 of that section. The determination of the value of the goods for the purpose of assessment necessarily takes in the quantification of the goods involved in the assessment.

5. For the reasoning rendered in the foregoing paragraph, we hold that this appeal is maintainable.

6. Be that as it may, we also see that the realm of consideration is entirely on the basis of assimilation of relevant facts and figures which do not give rise to any question of law; much less any substantial question of law; as such. We say this, though the questions attempted to be raised, as if they are questions of law, are relatable to the procedure adopted in deciding the appeal by the Tribunal.

7. We do not see any ground to entertain this appeal and to interfere with the order impugned.

In the result, this appeal is dismissed.

THOTTATHIL B. RADHAKRISHNAN, JUDGE

K.HARILAL, JUDGE

okb.