

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.106 of 2014 (O&M)
DATE OF DECISION: 27.03.2015

Commissioner of Central Excise Delhi-III

....Appellant

versus

M/s Becton Dickinson India Pvt. Ltd.

.....Respondent

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sunish Bindlish, Advocate for the appellant
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

Notice of motion.

2. Mr. Jagmohan Bansal, Advocate accepts notice on behalf of the respondent.

3. This is an appeal against the order of the Customs, Excise and Service Tax Appellate Tribunal setting aside the order of the Commissioner and allowing the respondent's appeal.

4. The question that arises in this matter is whether the respondent was bound and liable to act pursuant to and in accordance with Rule 57H(7) of the Central Excise Rules, 1944, which reads as under:

"A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of the credit of duty paid on inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of the inputs lying in the stock or used in any finished excisable goods lying in the stock on the dates when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for the payment of duty

on any excisable goods, whether cleared for home consumption or for export."

5. Mr. Bansal, learned counsel appearing on behalf of the respondent, contended that there was no question of the respondent acting in accordance with Rule 57H(7) as the notification under which the respondent availed of the exemption was not based on the value or quantity of clearances. If that is so, it is possible that the demand made against the respondent would not survive at all. This issue goes to the root of the matter. The Tribunal has not considered this crucial issue at all. If the appeal is admitted on the other grounds, the respondent may well be precluded from raising this contention in this appeal. That would be unfair to the respondent.

6. In the circumstances, the appeal raises a substantial question of law as to whether the order and judgment of the Tribunal is perverse for not having considered a crucial aspect of the matter at all.

7. The appeal is accordingly allowed. The impugned order is set aside. The Tribunal is directed to decide the contentions afresh including the respondent's contention that it was not necessary for it to comply with the provisions of Rule 57H(7) on the ground that the notification under which it availed of the exemption was not based on the value or quantity of clearances. It is clarified that all other contentions of both the parties are also kept open. There shall be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

27.03.2015
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(HARINDER SINGH SIDHU)
JUDGE

