IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 22 of 2014 (O&M)

Date of decision: 10.8.2016

Commissioner Central Excise, Rohtak .. Appellant

vs

M/s Agarwal Plywood Corporation .. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Saurabh Goel, Advocate, for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. Abhishek Sanghi, Advocate, for the respondent.

Rajesh Bindal, J.

This order will dispose of bunch of appeals bearing CEA Nos. 22 to 36, 41 to 43, 47 to 50, 56 and 57 of 2014.

The facts have been noticed from CEA No. 22 of 2014. The revenue has raised the following substantial questions of law:-

(i) Whether presumption as to the truth, of the contents of the data retrieved by the 'Government Examiner of Questioned Documents' (GEQD), from the seized laptop of Shri Jitendra Kejriwal, Managing Director, is admissible in terms of section 36A read with sub-sections (1) (c), (2), (4) and (5) (b) of section 36B of the Central Excise Act and section 65B(1) of the Indian Evidence Act, as the appellant has failed to prove the contrary?

(ii) Whether the Hon'ble CESTAT has misappreciated the evidence led by the appellant.

(iii) Whether the provisions of Section 36A read with Section 36B of the Central Excise Act, 1944 are invokable in respect of the computer printouts generated by the GEQD from the personal computer/laptop of the Managing Director of the unit?

(iv) Whether the term 'Computer Print Out' referred to in section 36B of the Central Excise Act, 1944, applies only to the computer print outs seized from the premises or also applies to the data stored in the memory of the computer seized from the premises of the unit or personal laptop of the managing director?

All the appeals are result of orders passed by the Adjudicating Authority in pursuance to search operation on the premises of M/s Surya Boards Limited and its sister concerns. As a result of the material seized, assessments of the party searched and other related parties were framed.

At the very outset, learned counsel for the respondent submitted that the issues raised by the appellant in the present bunch of appeals have relation with the valuation of exciseable goods, hence, in view of the bar contained in Sections 35G and 35L(1)(b) of the Central Excise Act, 1944 (for short, 'the Act'), the appeal would be maintainable before Hon'ble the Supreme Court and not in this Court.

Learned counsel for the appellant fairly did not dispute that in case the material, as referred to by the appellant in the appeals is considered, the same will have relation with valuation of the exciseable goods.

Heard learned counsel for the parties.

A perusal of Section 35G of the Act shows that an appeal lies to the High Court from every order passed in appeal by the Tribunal, except against an order relating to determination of any question having relation to the rate of duty of excise or to the value of goods for the purposes of assessment. Section 35L(1)(b) of the Act correspondingly provides for an appeal to Hon'ble the Supreme Court against such orders.

As undisputedly, the issues raised in the present set of appeals have relation with the valuation of goods for the purpose of assessment of duty, in our view, the appeals filed in this Court, will not be maintainable.

Accordingly, the same are dismissed. However, it will not debar the appellant from availing its appropriate remedy, in accordance with law.

(Rajesh Bindal)
Judge

10.8.2016
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned Yes/No
Whether Reportable Yes/No