NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 35 of 2011

M/s. Indo Lahiri Bio Power (Melting Division) Jaranda Raipur (Chhattisgarh)

---- Appellant

Versus

Commissioner of Customs and Central Excise, Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Siddharth Dubey, Advocate.
For Respondent : Shri Vinay Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Pritinker Diwaker, J.

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

22/03/2017

1. This is an appeal under Section 35-G of the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

2. We have heard the learned counsel appearing for the Appellant and the learned counsel for the Revenue.

3. The only issue on which this appeal has been admitted is on the following question of law formulated through the order dated 29.04.2015:

> "Whether materials could have been collected and evidence taken behind the back of the Appellant to hold him liable without an opportunity to him to cross-examine those whose evidence was sought to be relied upon and furnishing the documents also on basis of which the liability was fixed?"

4. Thus, the short issue that arises for decision is as to whether the order of the Tribunal is liable to be revered through this appeal under Section 35-G of the Act on the question formulated above.

5. Reverting to the submissions of learned counsel for the Appellant and the learned counsel for the Revenue, it can be seen that the crux of the appeal revolves around the plea that appropriate opportunity was not extended to the Assessee to cross-examine one Shri Ganguly. This question, *ex facie* is at the best a mixed question of facts and law. Even if other persons were also required to be cross-examined, those are in the realm of adjudication. The question therefore, would be as to whether the Tribunal had failed to appreciate the contentions of the Assessee if such a plea was raised before the Tribunal. Adverting to paragraph 5.1 of the Tribunal's order, it can be seen that the argument on behalf of the Assessee was basically noted. The Tribunal also noted that the adjudicating authority was specifically requested to permit cross-examination of Shri Ganguly "if adjudicating authority intends to give no credence to such documents." It is true that the adjudicating authority did not afford any opportunity to cross-examine Shri Ganguly. The Tribunal refused come to the aid of the Assessee and gave reasons for its decision through paragraph 6.2 of its order. Now we may recall that the Assessee deals with the manufacture of M.S. Ingots and the questions revolved around private documents maintained to regulate and control entry and exit of the goods through its gates.

6. The Tribunal said that from the records, it is seen that the Respondents had not asked for cross-examination citing any valid reason for such cross-examination of Shri Ganguly. It was noted that on the other hand, a vague request was made for cross-examination, that too, only if the original authorities wanted to rely upon the document maintained at the gate. The

Tribunal took the view that such request of cross-examination was not a serious request and was not substantiated and need not be considered. It was rightly observed that cross-examination is not a matter of right unlike in a prosecution proceedings in a Court of law. It was held that in case in hand, there was no valid request to seek cross-examination and that merely because the order of the original authority had gone against it, the Assessee cannot be permitted to revive his grievance regarding not permitting cross-examination. This reasoning of the Tribunal cannot be faulted through an appeal under Section 35-G of the Act.

7. Learned Counsel for the Asseesse argued that if an opportunity for cross-examination is given, his client will be able to prove as to whether there was any clandestine movement of goods. This obviously is a pure question of fact, depending upon appreciation of evidence. That cannot be made by an order of remit under Section 35-G of the Act to facilitate further cross-examination followed by a roving enquiry into the facts to substantiate any such point. This submission also, therefore, fails.

8. We find no infirmity or any question of law, much less any substantial question of law arising for decision in this appeal at the instance of the Assessee.

9. Resultantly, the appeal fails and is accordingly dismissed.

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (Pritinker Diwaker)
CHIEF JUSTICE **JUDGE**

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