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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 53 of 2017

- Commissioner, Customs, Central Excise & Service Tax Bilaspur, At- Central Excise Bhawan, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh

---- Appellant

Versus

- M/s Ultra Tech Cement Ltd. Hirmi Cement Works, Hirmi, District Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vinay Pandey, Advocate
For Respondent/State	:	Shri Abhishek Anand and Shri Raja Sharma, Advocates

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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

13.07.2017

1) We have heard learned counsel for the appellant-Revenue and the respondent in this appeal under Section 35 G of the Central Excise Act, 1944 (for short, 'the Act').

2) At the stage of admission, we need to first consider whether any substantial question of law worth consideration under Section 35 G of the Act has been made out by the appellant-revenue.

3) The respondent is a manufacturer of cement. It sold cement to certain customers. In paragraph 3 of the impugned order, the Tribunal categorically found that the purchase orders showed that the supply of cement is at the premises of the customers. This means that the supply has to be effected by making delivery of the

goods in the premises of the customer to conclude the sale of goods. That position notwithstanding, the Tribunal further noted that the freight is arranged and paid by the Assessee. The Tribunal also noticed that the freight charges are treated as integral part of the price of the goods. With these materials the Tribunal held, on facts, that the place of removal of goods cannot be treated as the factory gate of the Assessee but the delivery point, which is the door or premises of the customer.

4) With the aforesaid factual situation having been found by the Tribunal, on the basis of the materials on record, even if no reference was made by the Tribunal to the precedents referred to in para 3 of the impugned order, the conclusion could not have been otherwise. Therefore, we do not see that any question of fact or of law, much less a substantial question of law for the purpose of Section 35G of the Act, arises in this case to be decided in favour of the Revenue.

5) This appeal, therefore, fails. In the result this appeal is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

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