

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CEA-18-2016 (O&M)
DATE OF DECISION:14.03.2017**

**PRINCIPAL COMMISSIONER OF CENTRAL EXCISE AND SERVICE
TAX**

... Appellant

V.

M/S RAJA DYEING, LUDHIANA

... Respondent

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Sharan Sethi, Senior Standing counsel
for the appellant.

Mr. Amrinder Singh, Advocate
for the respondent.

S.J. VAZIFDAR, C.J.

This is an appeal under Section 35 G of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') against the order of the Central Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'), insofar as the Tribunal held that the duty demand of ₹ 36,78,122/- is not sustainable and set the same aside.

2. The appellant contends that the appeal raises the following substantial question of law:-

“Whether the impugned order made by the Hon'ble Tribunal can be said to be an order made in accordance with Law, when the Tribunal has set aside the order to the extent of clandestine removal without giving any reasoning and ignoring the

submissions of the Department with regard to facts and evidences on record?”

3. Mr. Amrinder Singh, the learned counsel appearing on behalf of the respondents has raised a preliminary objection as to the maintainability of this appeal under Section 35 of the Act. He contends that the appeal is not maintainable as the order passed by the Appellate Tribunal relates among other things to the determination of questions having a relation to the rate of duty of excise and/or to the value of goods for the purposes of assessment. Mr. Sharan Sethi, learned senior standing counsel appearing on behalf of the appellant, on the other hand, contends that the appeal only raises the issue of clandestine removal of goods and this issue is not related either to the rate of duty of excise or to the value of goods for the purposes of assessment.

4. The appellant, on the one hand, admits that the impugned order of the Tribunal deals with issues relating to the rate of duty of excise and/or to the value of goods for the purposes of assessment in addition to the issue of clandestine removal which is challenged in this appeal. On the other hand, Mr. Amrinder Singh admits that the issue of clandestine removal of goods simpliciter is not related to the rate of duty of excise or to the value of goods for the purposes of assessment. In other words it is common ground that the impugned order of the Tribunal even in so far as it concerns the respondent alone deals with the issues relating to the rate of excise duty and/or to the value of goods for the purposes of assessment as well as with other issues. The question that arises is whether an appeal is maintainable under Section 35 G to the High Court where the order of the Tribunal deals with questions having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment as well as with other questions. In our view, the question must be

answered in the negative. An appeal against such an order lies only to the Supreme Court under Section 35 L of the Act.

5. Sections 35 G and 35 L of the Act reads as under:-

“35G. Appeal to High Court- (1) *An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being 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 purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.*

(2) *The Principal Commissioner of Central Excise or Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-Section shall be -*

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the (Principal Commissioner of Central Excise or Commissioner of Central Excise) or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) *The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-Section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.*

(3) *Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-Section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-Section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section.”

“35L. Appeal to the Supreme Court –(1) An appeal shall lie to

the Supreme Court from -

(a) any judgment of the High Court delivered-

(i) in an appeal made under Section 35G; or

(ii) on a reference made under Section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H, in any case which, on its own motion or on an oral application made by or on behalf of the partly aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal 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 purposes of assessment.”

(2) For the purpose of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.”

6. As we have upheld the objection as to the maintainability of this appeal it is necessary to refer to the facts only briefly.

7. The matter relates to the relationship between three assesseees M/s SBM Woolen Mills, M/s Raja Dyeing i.e. the respondent and M/s Rosy Woolen Mills. M/s SBM Woolen Mills is a partnership firm consisting of two partners, one Satnam Singh and his brother one Mohinder Singh. It manufactures grey acrylic spun yarn. The respondent, Raja Dyeing is a partnership firm whose partners are one Bhupinder Singh and the wife of

Satnam Singh. It manufactures dyed acrylic yarn. Rosy Woolen Mills sells the dyed yarn purchased by it, *inter alia*, from the respondent.

The matter relates to the period 01.04.1999 to 14.11.2000. The appellant's case is that SBM evaded duty by under-valuing the goods namely grey acrylic yarn clearing them to the respondent and RWM at prices far less than even the cost of production. The price was lower than that of similar goods sold to other buyers. Other circumstances are indicated to show the close relationship between the three assessees SBM, the respondent and RWM. The Commissioner, therefore, adopted the average price at which the respondent, during the same period, bought similar goods from other vendors. Having done so, he demanded a duty of ₹ 5,19,100/- against SBM Woolen Mills.

The respondent availed an exemption under Notification No.5/99/CE and 6/2000 which prescribes a concessional rate of duty for the dyed acrylic spun yarn subject to the condition that the same had been manufactured out of the goods on which the appropriate duty of excise, under the schedule thereto, had been paid and no credit of Central Excise Duty paid on the goods, had been taken. Having come to the conclusion that the goods were purchased by the respondent from SBM at an under valuation, the Commissioner inferred that SBM had not paid the appropriate duty of excise and accordingly held that even the respondent was not entitled to the benefit of the said circular. ₹ 19,86,648/- was, therefore, demanded by the appellant from the respondent. This, it has been held, is a question that relates to the rate of duty. Had this been the only question before the Tribunal, an appeal against the decision of the Tribunal would not have been maintainable under Section 35 L

to the Supreme Court. Before the Tribunal, however, there were other questions as well.

SBM sold the goods to a number of buyers as well as to RWM. The Department alleged that the goods sold in cash to persons other than the respondent had actually been cleared to the respondent who used the same for the manufacture of unaccounted goods and the same had been cleared clandestinely without payment of duty. A demand for duty of ₹ 32,64,160/- has, therefore, been made against the respondent in this regard. Thus, against this respondent alone, the Tribunal dealt with questions relating to the rate of duty as well as to questions that do not relate to the rate of duty or to the value of the goods for the purposes of assessment.

The Commissioner by the order-in-original adjudicated the matter. He confirmed the demand of ₹ 5,19,100/- against SBM, imposed a penalty of the like amount on SBM and a further penalty of ₹ 50,000/-. The Commissioner also confirmed the duty of ₹ 15,14,161/- against the respondent on account of the respondent having wrongly availed the exemption under the said notification and also confirmed the demand of ₹ 36,78,122/- towards duty on account of clandestine removal together with interest thereon and penalty in respect thereof. Penalties were also imposed on the said Satnam Singh and Mohinder Singh.

8. It is not even necessary to consider whether the findings of the Tribunal as regards the other assessee namely SBM and RWM ought to be taken into consideration in deciding whether the appeal is maintainable or not. The decision of the Tribunal in respect of the respondent itself related to questions that fall within the ambit of Section 32 G as well as in respect of

questions that fall outside the ambit of Section 32 G. This is evident *inter alia* from paragraphs 7 and 8 of the impugned order. In paragraph 7, the Tribunal dealt with the dispute regarding the demand of ₹ 15,14,161/- towards duty against the respondent on the basis of the incorrect availment of the exemption notification. In paragraph 8, the Tribunal upheld the payment of ₹ 36,78,122/- towards duty. The Tribunal held as under:-

“Coming to the duty demand of Rs.36,78,122/- against RD, this is based on the allegation that all the clearances of grey acrylic spun yarn by SBM to RWM and to other buyers who have purchased in cash have actually been diverted to RD who have used the same for unaccounted manufacture of dyed yarn which had been cleared clandestinely without payment of duty. On going through the records, we find that this allegation is based only on the presumption and there is absolutely no evidence to substantiate the same. Even if there is mutuality of interest between SBM and RD one hand and SBM and RWM on the other hand, it cannot be presumed that the yarn sold by SBM to RWM had actually be diverted to RD who had used it for unaccounted manufacture of died yarn. In view of this, we hold that duty demand of Rs.36,78,122/- is not sustainable and is to be set aside.”

The position, therefore, is that even as regards the respondent alone the Tribunal by the impugned order decided questions that fall within the ambit of Section 35 G as well as with questions that fall outside the ambit of Section 35 G and within the ambit of Section 35 L of the Act.

9. We reiterate that we are not concerned here with the merits of the findings. While deciding the maintainability of the appeal, the merits are not

relevant. It is necessary only to note the questions that were determined by the Appellate Tribunal.

10. Section 35 G provides for an appeal to the High Court from every order passed in appeal by the Appellate Tribunal on or after 01.07.2003 (not being 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 purposes of assessment). Thus, an appeal under Section 35 G is against the order passed in appeal by the Appellate Tribunal and not against the order of the Adjudicating Authority. An appeal does not lie to this Court from the order of the adjudicating authority/Commissioner. The issue as to whether an appeal is maintainable or not must, therefore, be decided on the basis of and taking into consideration the order passed in appeal by the appellate authority and not by the order passed by the adjudicating authority. In any event, the order of the adjudicating authority would stand merged in the order of the appellate authority. In other words, while determining whether an appeal is maintainable under Section 35 G or not, it is necessary to see whether the order passed in appeal by the Appellate Tribunal and not the order passed by the adjudicating authority determines any question having any relation to the rate of duty of excise or to the value of goods for purposes of assessment. We must, therefore, ascertain what the appellate authority decided in the impugned order.

11. The words “among other things” in Section 35 G are of singular importance in determining the ambit of Section 35 G. These words indicate that an appeal is maintainable under Section 35 G to the High Court only if the order passed in appeal by the Tribunal is not one relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods

for the purposes of assessment, an appeal against that order would lie only to the Supreme Court under Section 35 L and not to the High Court under Section 35 G. This would be so even if the appeal is only in respect of questions other than the rate of duty or the value of the goods for the purpose of assessment. It is the nature of the order of the Tribunal and not the scope of the appeal that determines the maintainability of the appeal under Section 35 G.

12. It is not necessary to look far for the reason for this provision. The intention is to consolidate all appeals from the order of the Tribunal in one Court - either in the High Court or in the Supreme Court. A contrary view would result in multiple appeals being filed before both the Courts where the order of the Tribunal relates to the determination of questions having a relation to the rate of duty of excise or value of goods as well as to other questions. In such cases the party which desires challenging the order of the Tribunal relating to both types of questions would have to file one appeal in the High Court and another in the Supreme Court. The party which desires challenging one type of issue would have to file an appeal before the Supreme Court and the other party that intends challenging the other type of issue would have to file an appeal before the High Court. There could potentially be four appeals against the same order of the Tribunal- two in the High Court and two in the Supreme Court. It was precisely to avoid these situations that Section 32 G was enacted. It was to avoid the bifurcation of proceedings before the Supreme Court and the High Court.

13. This would also avoid conflicting findings. A view to the contrary would lead to the possibility of an appeal against the order of the Tribunal being maintainable in certain respects before the High Court and in other respects before the Supreme Court. This could lead to considerable confusion and complication. For instance, it may well be necessary in a given case for the Supreme Court to refer to, analyse and adjudicate upon the facts in relation to an order relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment. It may equally be necessary for the High Court in an appeal against the same order to consider, analyse and adjudicate upon the same facts but in relation to the other questions. Although theoretically, it would be possible to bring the matter to a conclusion with consistent findings the process would be considerably cumbersome and in many cases impractical. For instance, in a given case, a party may not challenge the order of the High Court. Against the same order in the appeal before the Supreme Court, it would be possible to come to different conclusions on the facts. The party, against whom the facts have been determined, would be faced with the findings of fact by the High Court. Both the judgments would have attained finality but with inconsistent findings. This could not have been the intention of the Legislature.

14. Whether an appeal lies to the High Court under Section 35 G or to the Supreme Court under Section 35 L cannot possibly depend upon the nature or scope of the appeal that the party intends filing. A party may seek to challenge only that part of the order of the Tribunal which relates to questions other than those relating to the rate of duty of excise or the value of the goods for the purposes of assessment. Such an appeal would, absent any other

questions, lie to the High Court. Once it is held that an appeal against the order of the Tribunal which deals with questions that fall within the ambit of Section 35 L as well as other questions lies to the Supreme Court under Section 35 L the mere fact that the party chooses to challenge only that part of the order that falls within the ambit of Section 32 G would make no difference. In other words, it cannot be said that the party that chooses to challenge the order of the Tribunal only so far as it relates to the determination of questions falling within the ambit of 35 G must file the appeal before the High Court even though the order also deals with questions that fall within the ambit of Section 32 L. In that event, if the other party files an appeal against the order of the Tribunal on issues that fall within the ambit of Section 32 L in the Supreme Court, the very purpose of Section 32 G of bringing the appeals either before the Supreme Court or before the High Court would be defeated. It can hardly be suggested that in that case, the appeal filed under Section 32 G before the High Court ought to stand transferred to the Supreme Court. The scheme of the Act in general and Sections 32 G and 32 L in particular do not indicate such a mechanism.

15. Our view is supported by the following judgments of the Delhi High Court and of the Karnataka High Court.

The Division Bench in *Commissioner of S.T., Bangalore* Versus *Scot Wilson Kirkpatrick (I) Pvt. Ltd., 2011 (23) S.T.R. 321 (Kar.)*, held:-

“13. In order to appreciate this contention, we have to carefully see the wordings employed by the legislature. The relevant words are as under : -

“Not being 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 Service for the purposes of assessment”.

The key word in the said provision is “for the purpose of assessment”. That means the order referred to therein is an order passed in the course of assessment. Therefore, all orders passed in the course of assessment involving the determination of any question having a relation to the rate of duty of service or to the value of Service, cannot be the subject matter of appeal before the High Court. By the use of the word ‘among other things’ it is made clear, even order which may not be directly related to the rate of duty of service or the value of Service, however which are intermingled with those matters are also excluded. In other words those are not the only orders contemplated by the legislation. In order to understand the width and depth of the orders covered under these words, it is necessary to know the meaning of “assessment”.

16. In ***Commissioner of Service Tax, Delhi*** Versus ***Bharti Airtel Ltd., 2013 (30) S.T.R. 451 (Del.)***, the Delhi High Court held:-

“5. In the present case, we find that the impugned order deals not only with the question of limitation but also with the question of valuation. It so happens that in the present case, the issue with regard to the valuation of the taxable services was decided in favour of the revenue but, because the extended period of limitation was not invocable, as per the Tribunal, the respondent-assessee did not prefer any appeal against the said order. But, the order which is impugned before us deals with both the issues, that is, the issue of valuation of taxable services as also the issue of limitation. The mere fact that the appellant is only aggrieved by the decision on the point of limitation would not make an appeal from the impugned order maintainable before this Court because it is not the issues raised in the appeal which are

material but the nature of the order which is appealed against is relevant for the purpose of determining whether an appeal would lie in this Court or not.”

17. In **Commissioner of Service Tax Versus Ernst & Young Pvt. Ltd., 2014 (34) S.T.R. 3 (Del.)**, the Division Bench of Delhi High Court held:-

“9. Before we examine other judgments, it is important to examine the language of Section 35G in the bracketed portion which relates to matters in which appeal is to be filed before the Supreme Court. Section 35L of the F. Act is specific. The words/expression used is “determination of any question in relation to rate of duty or value for the purpose of assessment”. The word ‘any’ and expression ‘in relation to’ gives appropriately wide and broad expanse to the appellate jurisdiction of the Supreme Court in respect of question relating to rate of tax or value for the purpose of assessment. Further, if the order relates to several issues or questions but when one of the questions raised relates to “rate of tax” or valuation in the order in the original, the appeal is maintainable before the Supreme Court and no appeal lies before the High Court under Section 35G of the CE Act. Referring to the expression “other things” in Section 35G of the CE Act in the case of Bharti Airtel Limited - 2013 (30) S.T.R. 451 (Del.), a Division Bench of this Court has stated :

“3. On a plain reading of Section 35G of the Central Excise Act, 1944 it is clear that no appeal would lie to the High Court from an order passed by CESTAT if such an order relates to, among other things, the determination of any question having a relation to the rate of duty or to the valuation of the taxable service. It has nothing to do with the issues sought to be raised in the appeal but it has everything to do with the nature of the order passed by the CESTAT. It may be very well for the

appellant to say that it is only raising an issue pertaining to limitation but the provision does not speak about the issues raised in the appeal, on the other hand, it speaks about the nature of the order passed by the Tribunal. If the order passed by the Tribunal which is impugned before the High Court relates to the determination of value of the taxable service, then an appeal from such an order would not lie to the High Court.

4. However, we feel that although those decisions do support the contention of the learned counsel for the respondent, the approach that we have taken is a more direct. We reiterate, it is not the content of the appeal that is determinative of whether the appeal would be maintainable before the High Court or not but rather the nature of the order which is impugned in the appeal which determines the issue.”

18. In ***Commissioner of Central Excise Versus Vimla Roling Mills, 2015 (317) E.L.T. 702 (Del.)***, the following order was passed:-

“[Order]. - In these appeals by the Revenue, substantial question of law were framed on 24th February, 2014 and 25th February, 2014. However, the High Court does not have jurisdiction to entertain the present appeals under Section 35G of the Central Excise Act, 1944. In the order-in-original, several issues were decided including the question whether the activity undertaken by the respondent-assessee amounts to manufacture. The said question or dispute pertains to levy of duty, which is a question relating to rate of duty as held in CEAC No. 12/2013, Commissioner of Service Tax v. Ernst and Young Pvt. Ltd. and other connected cases decided on 25th February, 2014 [2014 (34) S.T.R. 3 (Del.)]. In this decision, it has been observed that the issues and contentions decided in the order-in-original would determine whether an appeal would lie before the High Court under Section 35G of the Central Excise Act, 1944 or before the

Supreme Court under Section 35L of the aforesaid Act. The issue decided by the Tribunal and raised before the appellate court would not be relevant on the question of jurisdiction of the Supreme Court or the High Court under Section 35L or 35G of the aforesaid Act. This was apparent from the language and words of the two provisions and a contrary interpretation would lead to unacceptable results with one party filing appeal under Section 35G and the other party under Section 35L of the said Act. Further, the respondent may be denied right to file cross objections. It is noticeable that in the first round also, against the order of the Tribunal, an appeal was preferred before the Supreme Court by the assessee.

2. In these circumstances, the appeals are returned as they are not maintainable before the High Court. It is open to the appellant-Revenue to file an appeal under Section 35L of the Central Excise Act, 1944, if so advised, and in accordance with the law.”

We, however, must express a reservation regarding the observation that the issues and contentions decided in the order-in-original would determine whether an appeal would lie in the High Court under Section 35 G or in the Supreme Court under Section 35 L. In our view it is not the order-in-original i.e. the order of the adjudicating authority but the order of the Tribunal that would determine the issue as to whether the appeal lies to the High Court under Section 35 G or to the Supreme Court under Section 35 L. Section 35 G provides for an appeal to the High Court from every order passed in appeal by the appellate Tribunal. It is, therefore, the order of the Appellate Tribunal that must determine the issue. Moreover Section 35 G restricts the ambit of the appeal to orders of the Tribunal “not being an order relating, among other things, to the determination... ..”. The words “an order” relate to the order passed in appeal by the Appellate Tribunal.

19. We are in respectful agreement with the above judgments except to the extent indicated above.

20. Mr. Sethi, on the other hand, relied upon the following observations of the judgment of the Allahabad High Court in the ***Commr. of Cus. & C. Ex., Meerut-II Versus Honda Siel Power Products Ltd., 2016 (332) E.L.T. 222 (All.)***:-

“10. Section 35G of the Act provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after 1st day of July, 2003 (not being 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 purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. Section 35L provides that an appeal shall lie to the Supreme Court from any judgment of the High Court delivered in an appeal under Section 35G or on a reference made under Section 35G by the Appellate Tribunal before 1st day of July, 2003 or on a reference made under Section 35H. Clause (b) of Section 35L provides that an appeal shall lie to the Supreme Court from any order passed by the Tribunal 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 purposes of assessment. Thus, the exclusion of power of the High Court to entertain an appeal under Section 35G of the Act is limited to an order of the Tribunal 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 purposes of assessment. Thus Section 35G of the Act does not exclude the power of the High Court to entertain an appeal against an order passed by the

Appellate Tribunal on the question of manufacture. The basic question involved in the present appeal as also contested by the parties from the initial stage is whether the activity of the assessee with respect to the goods in question cleared by them is manufacture? Thus, we do not find any substance in the first preliminary objection raised by the respondent assessee as the maintainability of the appeal before the High Court under Section 35 G of the Act and accordingly, the said preliminary objection is rejected. We hold that the appeal is maintainable under Section 35G of the Act.”

Mr. Sethi submitted that other questions that fall within the ambit of Section 35 L were also determined by the Tribunal in that case but as the appeal involved only the question of manufacture, it was held that it was maintainable under Section 35 G. If that is so, we are with respect, unable to agree with the judgment of the Allahabad High Court for the reasons we have already stated. The scope of the appeal does not determine the question as to whether an appeal is maintainable under Section 35 G or Section 35 L.

21. Mr. Sethi then relied upon the following observations in ***Commr. Of C. Ex., Cus. & S.T., Bharuch*** Versus ***Shree Krishna Industries, 2016 (338) E.L.T. 535 (Guj.):-***

“12. From the principles propounded in the above decision what emerges is that for the purpose of falling within the ambit of the phrase “relation to” the controversy involved must have a direct and proximate relationship to the rate of duty and to the value of goods for the purpose of assessment and that the controversy must be such that the decision rendered thereon would have a wide application. The facts of the present case are required to be examined in the light of the above principles.

13. In the opinion of this Court, from the facts as appearing from the record, the controversy before the Tribunal did not relate to the determination of any question having a relation to the rate of duty or value of goods for the purposes of assessment. Under the relevant exemption notification, an SSI unit is not entitled to the benefit thereof for the clearances exceeding rupees one crore. The respondent being an SSI unit, its entitlement to the benefit of the exemption notification is not otherwise in dispute. The only question involved in this case is a pure question of fact as to whether the clearances made by the respondent for the period under consideration, in fact, exceeded the limit stipulated under the exemption notification or were within such limit.”

These observations do not deal with the question before us. In fact Mr. Amrinder Singh pointed out that they support the view that the determination of the question as to whether Section 32 G applies or whether Section 32 L applies requires the consideration of the order of the Tribunal.

22. The appeal is, therefore, dismissed on the ground that it is not maintainable under Section 32 G of the Central Excise Act, 1944.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

14.03.2017
SwarnjitS

Whether speaking/reasoned	Yes
Whether reportable	Yes