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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CEA-19-2016 (O&M)
DATE OF DECISION:24.03.2017

COMMISSIONER CENTRAL EXCISE COMMISSIONERATE,
ROHTAK

... Appellant

Versus

M/S ICEBERG FOODS LTD.

... Respondent

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

Present: Mr. Amit Goyal, Advocate
for the appellant.

Mr. Vikrant Kackria, Advocate
for the respondent.

S.J. VAZIFDAR, C.J. (ORAL)

CM-8144-CII-2016

Application is allowed as prayed for.

CM-8145-CII-2016

For the reasons mentioned in the application, the application is allowed and the delay of 8 days in filing the present appeal is condoned.

MAIN CASE

This is an appeal against the order and judgment dated 15.07.2015 (Annexure A-4) of the Customs, Excise and Service Tax Appellate Tribunal.

2. Mr. Vikrant Kackria, the learned counsel appearing on behalf of the respondent raises a preliminary objection to the effect that the appeal is not maintainable under Section 35 G of the Central Excise Act, 1944.

3. The issue is whether the respondents were entitled to the benefit of Notification No.8/2003 CE dated 01.03.2003. The question is whether the respondent/assessee is entitled to the benefit of the notification being a small scale industry. The notification grants an exemption to such small scale industries.

4. A similar notification fell for the consideration of a Division Bench of this Court in the case of **Commissioner of Central Excise, Panchkula** Versus **Special Machine** reported as **2009 (242) E.L.T. 330 (P&H)**. The Division Bench held:-

“11. The question of law formulated by the revenue-appellant in the instant appeals also refers to exemption under Notification No. 175/86-C.E. as amended vide Notification No. 1/93-C.E., dated 28-2-1993 in CEA No. 48 of 2005 & Notification Nos. 8/2001-C.E., dated 1-3-2001 and Notification No. 8/2002-C.E., dated 1-3-2001 in CEA No. 120 of 2005, relating to the rate of duty of excise. The Notification No. 1/93-C.E., dated 28-2-1993 was subject of consideration of a Division Bench of Bombay High Court (at Goa) in the case of Commissioner of Customs and Central Excise, Goa v. Primella Sanitary Products (P) Ltd., 2002 (145) E.L.T. 515 (Bom.). The Division Bench has relied upon the judgment of Hon’ble the Supreme Court in Navin Chemicals case (supra).

12. In view of the afore-discussed legal position, the substantial questions of law raised in these appeals, which are stated to have been arising from the Tribunal, relates to determination of a question having relation to the rate of duty of excise, therefore, we are of the considered view that for determination of such question, remedy of appeal lies to Hon’ble the Supreme Court and the same has to be filed before Hon’ble the Supreme Court under Section 35L of the Act.”

The notification in the present case is similar to the notification No.8/2001 dated 01.03.2001 which fell for the consideration of the Division Bench.

5. In view of the judgment of this Court in the case of *Commissioner of Central Excise, Panchkula* Versus *Special Machine* reported as *2009 (242) E.L.T. 330 (P&H)*, this appeal is dismissed on the ground that it is not maintainable under Section 35 G of the Central Excise Act, 1944.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

24.03.2017
SwarnjitS

Whether speaking/reasoned	Yes /No
Whether reportable	Yes /No