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

**CEA No. 62 of 2015 (O&M)
Date of Decision : 30.01.2017**

M/s Chirag Packaging Machines (P) Limited ...Appellant

Versus

Commissioner of Central Excise, Delhi IV ...Respondent

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

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Manpreet Singh, Advocate for the appellant.

Mr. Tejinder K. Joshi, Advocate for the respondent.
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S.J. VAZIFDAR, C.J.(Oral)

1. This is an appeal against the order passed by the Tribunal upholding the levy of penalty by the adjudicating authority against the assessee and its Directors under Rule 25 of the Central Excise Rules, 2002.

2. The adjudicating authority decided a show cause notice against the appellant and denied it the benefit of an exemption under a notification. The demand of central excise duty was confirmed and interest was imposed. The appellant challenged this order before the Tribunal. The Tribunal remanded the matter to a certain extent. The appellant challenged this part of the order by filing CEA No. 69 of 2015. By a separate order and judgment passed today, we dismissed the appeal on the ground that it was not maintainable under section 35L of the Central Excise Act, 1944. The adjudicating authority also imposed a penalty upon the appellant consequent to the finding in the show cause notice. The appellant challenged the same before the Tribunal. Having remanded the quantum appeal to a limited extent, the Tribunal clarified that it will be open to the adjudicating

authority to re-compute the penalty, if necessary, corresponding to the adjustment in the main appeal also. This appeal before us is against the order relating to penalty.

3. Mr. T.K. Joshi, the learned counsel appearing on behalf of the respondent raised a preliminary objection that the appeal is not maintainable in view of section 35L of the Central Excise Act, 1944, which reads as under:

> ***35L. Appeal to Supreme Court*** *– (1) An appeal shall lie to the Supreme Court from:-*
>
> *(a) xxxx xxxx xxxx xxxx*
>
> *(b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of 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 purposes 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."*

4. Mr. Joshi's preliminary objection is well founded. In our view the result of this appeal which is in respect of a penalty levied pursuant to the decision in the main appeal i.e. CEA No. 69 of 2015, must follow the decision in the main appeal. Section 37 of the Act contains the Central Government's power to make rules to carry into effect the purposes of the said Act. Pursuant thereto the Central Government made the Central Excise Rules, 2002. Rule 25 thereof reads as under :-

> *"**Rule 25, Confiscation and penalty** – (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -*
>
> *(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under*

> *these rules; or*
>
> *(b) does not account for any excisable goods produced or manufactured or stored by him; or*
>
> *(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or*
>
> *(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,*
>
> *then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or rupees two thousand, whichever is greater.*
>
> *(2)................."*

5. The order of penalty is in relation to and in consequence of the main order which deals with the assessee's liability under the Act. It is, therefore, an order passed by the Appellate Tribunal relating to the determination of a question having relation to the rate of duty of excise or to the value of goods for the purposes of assessment. Once, it is held that the assessment order has a relation to the determination of any question having a relation to the rate of excise duty or to the value of goods for purposes of assessment, it follows that the order of penalty passed consequent thereto or in view thereof also relates to the determination of such a question. The words used are "relating .... to" the determination of a question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment. If an order of penalty was not to be within the ambit of section 35L, it would have been worded entirely differently.

6. It can hardly be suggested that the legislature intended appeals

against the main order being filed before the Supreme Court and appeals against an order of penalty imposed in the same, are being filed before the High Court. Section 35L does not indicate such an intention. We are unable to infer it.

7. In these circumstances, this appeal is also dismissed only on the ground that it is not maintainable.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
30.01.2017 **JUDGE**
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Whether speaking/reasoned? **Yes**

Whether reportable? **Yes**