

CEA No. 69 of 2015 (O&M)

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

**CEA No. 69 of 2015 (O&M)
Date of Decision : 30.01.2017**

M/s Chirag Electronics

...Appellant

Versus

Commissioner of Central Excise

...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.

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

1. This is an appeal against the order of the Customs Excise Service Tax Appellate Tribunal under Section 35-C(1) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

2. Learned Senior counsel appearing on behalf of the appellant has pressed only ground (v) of the appeal, which reads as under :-

“Whether the learned Tribunal has erred in deciding the Appeal of the Appellant without Notice of final hearing of the same.”

The appeal is admitted on this ground.

3. Mr. Joshi, the learned counsel appearing on behalf of the respondent, raised a preliminary objection as to the maintainability of the

appeal. He contended that the appeal is not maintainable in view of Section 35L(1) (b) and (2) of the Act, which read 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 [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 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. The appellant claims to be entitled to the benefit of a Notification dated 01.03.2003 issued under Section 5A of the Act, which exempts clearances, specified in column (2) of the Table therein for home consumption of excisable goods of the description specified in the Annexure appended to this notification from so much of the aggregate of the excise duty specified in the First Schedule to the Central Excise Tariff Act, 1985 and the special duty of excise specified thereon in the Second Schedule to the said Central Excise Tariff Act, 1985, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the table. Serial No. 1 of the Table provides for the first clearances up to an aggregate value not exceeding Rupees One Crore made on or after the 1st day of April in any financial year as the value of clearances. The rate of duty is stated to be nil.

5. There is no dispute that the goods manufactured by the

appellant are of the description specified in the Annexure to the Notification. The relevant provision of the Notification reads as under:-

“2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) xxxx xxxx xxxx xxxx

(ii) xxxx xxxx xxxx xxxx

(iii) xxxx xxxx xxxx xxxx

(iv) xxxx xxxx xxxx xxxx

(v) where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory;

(vi) xxxx xxxx xxxx xxxx

(vii) the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed rupees three hundred lakhs in the preceding financial year.

3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely:-

(a) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4;”

6. The Tribunal upheld the order passed by the Assessing Authority observing that the order had taken into account the relevant facts such as common control, financial flow back in absence of manufacturing facilities at the associate concern M/s Chirag Packaging Machines (Pvt.) Ltd. (CPMPL), common employees and office between the two entities and the rent free space given to the Company and that it has been established

that two units are to be clubbed by considering their entitlement to the benefit of the Notification. It is also held that the adjudicating authority had established that the name 'Chirag' did not belong to the assessee but actually belonged to others.

7. It is not open to us to express any opinion on the merits of the contention as we have upheld the preliminary objections as to the maintainability of the appeal.

8. Mr. Joshi's reliance upon a judgment of a Division Bench of this Court dated 03.08.2009 passed in CEA No. 48 of 2005 (O&M) titled '**Commissioner, Central Excise Commissionerate, Panchkula Vs. M/s Special Machine', Karnal**, is well founded. The Division Bench considered a similar notification issued earlier. The question in that matter was whether the clearance made by various units, was liable to be clubbed or not for the purpose of deciding the eligibility for exemption under that notification. The Revenue filed an appeal against the order of the Tribunal in which the assessee raised a preliminary objection as to the maintainability of the appeal. The Division Bench held that the issue was covered under various judgments including that of the Supreme Court. It has held that the dispute as to whether or not the assessee is covered by way of the notification relates directly to the rate of duty applicable thereto for the purpose of the assessee. Paragraph 12 of the judgment reads as under:-

“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.”

9. As mentioned earlier the substantial question raised in that matter was whether the clearance made by various units was liable to be clubbed for the purpose of deciding eligibility under the notification in that case, which is admittedly similar to the notification in the case before us. We are bound by the judgment. The appeal is, therefore, not maintainable.

10. Mrs. Suri, the learned Senior counsel appearing on behalf of the appellant, contended that the judgment in ***Commissioner, Central Excise Commissionerate, Panchkula Vs. M/s Special Machine', Karnal(supra)*** is distinguishable. She contends that in the present case, the assessee has challenged the impugned order only on the ground that the order does not contain any reasons and reasons according to her are mandatory.

11. We must proceed on the basis that the appeal on merits, in any event, is not maintainable in view of the above judgment of this Court. It would make no difference if the impugned order is challenged on a different basis. An order may be appealable on various grounds. It may suffer from several infirmities. The maintainability of an appeal under Section 35L depends upon the order impugned and not upon the grounds on which it is challenged or upon the infirmities that resulted in the order being passed. This is clear from section 35L of the Act, which provides that an appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal relating, among other things, to the determination of any question

having relation to the rate of duty of excise or to the value of goods for purposes of assessment. Once it is held that the impugned order falls within the ambit of Section 35L (1) (b), the entire order including all aspects thereof are appealable only to the Supreme Court and not to any other Court. The alleged failure to furnish reasons even if established is only one of the aspects of the impugned order. It is not the order itself. It is an order that is challenged in appeal. The purpose of an appeal is to have set-aside the operative part of the order. There is a distinction between an order and the grounds on which it is based. The challenge to the grounds on which it is passed or the basis on which it is founded is to that end. Section 35L is not limited to certain aspects of an order referred to in Clause (b) of sub Section (1) therein. It pertains to the order itself and all aspects thereof.

12. A view to the contrary would lead to considerable difficulty in the operation of section 35L of the Act. It would then require an appeal on certain aspects pertaining to the order to be filed before the Supreme Court and in respect of other aspects before other Courts. This was not the intention of the legislature.

13. Mrs. Suri relied upon a Division Bench judgment of the Bombay High Court in ***Commissioner of Central Excise Vs. Mahindra and Mahindra Ltd.***, MANU/MH/1548/2014. It is true that in that case the Division Bench set-aside the order passed by the Tribunal, *inter alia*, on the ground that the Tribunal had dismissed the appeal when it was only at the stage of considering the application for stay/waiver of pre-deposit. The preliminary objection raised in this appeal was neither raised before the

Division Bench nor considered in that case. The judgment is, therefore, of no relevance to this appeal.

14. The appeal is, therefore, dismissed only on the ground that it is not maintainable.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

30.01.2017
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Whether speaking/reasoned? Yes

Whether reportable? Yes