
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CEA No.52 of 2016 (O&M)
Date of Decision: August 29, 2017

Principal Commissioner of Central Excise and Service Tax,
Ludhiana

...Appellant

versus

M/s Namdhari Industrial Traders

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Tajender K. Joshi, Sr. Standing Counsel
for the appellant-Revenue.

Mr. Jagmohan Bansal, Advocate
for the respondent-assessee.

AJAY KUMAR MITTAL, J. (Oral)

The present appeal has been preferred by the Revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 16.11.2015 (**Annexure A-5**) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial question of law:-

*'Whether the impugned order of the Hon'ble Tribunal
can be said to be an order made in accordance with*

law, when the Tribunal has blatantly ignored the facts of the case and findings of the adjudicating authority and has set aside the adjudication order without going into the merits of the case?'

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent is engaged in trading of steel angles, channels etc. and is also doing cutting welding of these steel angles, channels apart from getting these items galvanized by job worker. Based on certain information, the officers of Central Excise Ludhaina conducted investigation relating to non-payment of central excise duty by the respondent. The proceedings were initiated against the respondent and vide order dated 05.05.2011 (Annexure A-2), the demand of ₹ 2,07,34,612/- and penalty of equal amount was confirmed by the Commissioner, Central Excise, Ludhiana. On appeal, the Tribunal vide order dated 12.12.2011 (Annexure A-3), had remanded the matter back to the original authority for fresh adjudication. Upon remand, the Commissioner, Central Excise, Commissionerate, Ludhiana vide fresh order dated 15.03.2013 (Annexure A-4), had again confirmed the demand of ₹2,07,34,612/- and penalty of equal amount. Aggrieved against the said order, the respondent approached the Tribunal who vide order dated 16.11.2015 (Annexure A-5), had set aside the order passed by the Commissioner (Annexure A-4). Hence, the present appeal by the Revenue.

3. At the very outset, learned counsel for the respondent-assessee, referring to Section 35L of the Act, submitted that since the matter pertains to determination of question having relation to the rate of duty of excise, therefore, the appeal lies before the Apex Court. It was also urged that the present appeal filed by the Revenue under Section 35G of the Act is not maintainable. In support of his contentions, reliance was placed upon the decisions of the Delhi High Court in **Commissioner of Central Excise, Delhi-II vs. Pawan Kumar Bansal, 2015 (315) E.L.T. 529 (Del.)** and Karnataka High Court in **Commissioner of Central Excise, Bangalore-I vs. MCI Creations 2015 (322) E.L.T. 663 (Kar.)**. However, learned Senior Standing Counsel for the appellant-Revenue controverted the aforesaid contentions.

4. We have heard learned counsel for the parties.

5. It would be appropriate to reproduce Section 35L of the Act relating to appeal to Supreme Court. Section 35L of the Act reads thus:-

“35L. Appeal to 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 party

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 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. A perusal of the aforesaid provision shows that under Clause (b) of Sub-section (1) of Section 35L of the Act, an appeal shall lie to the Supreme Court from any order passed by the appellate tribunal relating to determination of any question having a relation to the rate of duty of excise or to the value of goods for the purpose of assessment. However, Sub-section (2) of Section 35L of the Act provides that the determination of any question having relation to rate of duty shall include the determination of taxability or exciseability of goods for the purposes of assessment. Accordingly, combined reading of Clause (b) of Section (1) of Section 35L of the Act together with Sub-section (2) thereof, clearly depicts that an appeal shall be maintainable to the Supreme Court from any order passed by the Tribunal relating to among other things regarding the determination of any question having relation to the rate of duty of excise or to the value of goods for the purposes of assessment.

7. The Delhi High Court in **Pawan Kumar Bansal's**

case (supra), while interpreting Sections 35G and 35L of the Act, had held that where the issue raised in the appeal relates to the question whether or not the activity undertaken by the assessee amounts to manufacture and accordingly the excise duty was leviable/payable, the High Court had refrained from entertaining the appeal in view of Section 35L of the Act. Similarly, the Karnataka High Court in **MCI Creations's case (supra)**, had also held to the same effect.

8. Having noted the legal preposition hereinabove, we advert to the factual matrix of the case. It has been noticed in the order (**Annexure A-5**) passed by the Tribunal that direction had been issued to the original authority to examine whether there was manufacturing activity in respect of each of the items sold. It was also prescribed that the process of cutting and welding, drilling, grinding and galvanizing on inputs like HR sheets, plates, channels to make manufactured parts of steel structure should also be examined by the authority concerned. In essence, the dispute here falls in terms of Sub-section (2) of Section 35L of the Act.

9. In view of the above, the present appeal filed under Section 35G of the Act is not maintainable as the substantial question of law that arises in the present appeal, falls within the parameters of Clause (b) of Sub-section (2) of Section 35L of the Act which specifically expresses that the appeal shall lie to the

Apex Court in such matters. Accordingly, the present appeal is disposed of with direction to the Registry to return the same with liberty to the Revenue to move and approach the Apex Court in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 29, 2017
sonia gugnani

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes