

HIGH COURT OF CHHATTISGARH, BILASPUR**TAXC No. 34 of 2018**

- M/s Vandana Global Ltd. Through Its Authorized Signatory - Shri Sanjay Sharma, Age 52 Years, S/o Shri Bhagirath Singh Having Its Office At Phase II, Siltara Insustrial Growth Centre, Siltara, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

- Commissioner, Customs, Central Excise And Service Tax, Raipur, Office Of Commissioner Of Customs And Central Excise, Central Excise Building, Dhamtrari Road, Tikrapara, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

For Appellant	: Shri Sharad Mishra, Advocate
For Respondent	: Shri Manish Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board by Manindra Mohan Shrivastava,J.

13/08/2018

With the consent of the parties, the appeal involving the issue for consideration is heard finally. The appeal was admitted on the

following substantial question of law :

“Whether the CESTAT was justified in law in refusing to admit th appeal ignoring that the issue related to valuation of goods and therefore, discretion to refuse to admit the appeal under sub-Section (1) of Section 35-B of the Central Excise Act, 1944 was not available under the law?”

This appeal has been directed against the order dated 15.11.17 passed by CESTAT whereby the appeal of the appellant under Section 35 B has been dismissed in *limine* invoking proviso II of Section 35 B of the Central Excise Act.

2. Counsel for the appellant raised a short and pointed submission that in the instant case, as the dispute relates to valuation of goods for the purposes of assessment, the discretion to refuse to admit the appeal on the ground of duty involved being less than 2,00,000/- was not available. In support of his submission, reliance has been placed on the decision of the Madras High Court in the matter of **Roots Multiclean Ltd. Vs. CESTAT, Chennai** reported in **2016 (336) ELT 25 (Mad.)**.

3. In reply, counsel for the revenue submitted that the present appeal arises out of the issue involving valuation of goods therefore in view of provision contained in Section 35 G sub-Section (1) of the Act, this appeal itself is not maintainable before this Court even it were to be assumed that the appeal was wrongly dismissed by the CESTAT, appellant's remedy lies elsewhere.

4. We have heard counsel for the parties.

5. In order to answer the question of law framed before us, we are required to examine the statutory scheme of Section 35 B of the Act. The provision contained in Section 35 B sub-Section (1) of the Act being relevant is extracted herein below:

35B. Appeals to the Appellate Tribunal.-(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) a decision or order passed by the Collector of Central Excise as an adjudicating authority;

(b) an order passed by the Collector (Appeals) under Section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Collector of Central Excise under Section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Collector of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,-

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country.

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty:

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d)

where-

(i) in any disputed case, other than a case where 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 is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.”

6. The second proviso to the aforesaid provision carves out an exception where the difference of duty involved or amount of fine or penalty determined by assessing authority being less than a particular amount, the Tribunal may even refuse to admit the appeal. This provision, added by way of proviso is explained in general provision where an assessee has right to appeal against the order of the nature specified in clause a,b,c,d of sub-Section (1) therefore, the exception clause contained in the proviso would require a strict constriction. What we notice in clause (i) of the Second proviso is that even where the difference of duty or the amount of penalty involved does not exceed the limit; (in the present case two lacs) there are certain kind of disputes where such discretion is not available to the Tribunal, which are as below:

(a) determination of any question having a relation to the rate of duty of excise;

(b) where the determination of any question having relation to value of goods for the purpose of assessment;

c) is in issue or is one of the points in issue.

The provisions so read and construed, where the determination of any question having relation to the valuation of goods for the purpose of assessment is an issue the discretion to refuse to admit the appeal would not be available to the tribunal and irrespective of the valuation, the issue will be required to be gone into merits. In other words, the statutory rights of appeal available to the assessee is available in such cases irrespective of the amount of difference in duty involved or the difference of duty involved or penalty involved therein, may be less than 2 lacs.

7. Right to appeal, as is well settled legal position, is a statutory right and once it is conferred on a party, exceptions to exercise such a right, incorporated in the provision, have to be read strictly and not liberal, in favour of beneficiary of the right.

In taking this view we find support from the decision of the Madras High Court in the case of **Roots Multiclean Limited Vs. CESTAT, Chennai** reported in **2016 (336) ELT 25 (Madras)**.

8. Though learned counsel for Revenue sought to convince us by submitting that the matter involving the issue with regard to valuation of goods, the statutory remedy under Section 35G of the Act, in any case, will not be available to the assessee, on plain reading of the provision contained in sub-Section (1) of Section 35 G, we are inclined to reject the submission. The relevant provision contained in sub-Section (1) of Section 35 G needs to be noticed. It is extracted herein below:

35 G 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 purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.....”

The exclusion of the class of orders against which the remedy of appeal under Section 35G would not be available are exhaustively enumerated as being order relating, among other things, to the determination of any question having a relation to the rate of duty of excise to the value of goods for the purposes of assessment.

9. This provision, on its rational, logical and fair interpretation should mean that where CSTAT in exercise of its appellate jurisdiction determines any question having relation to the rate of duty of excise or to the value of the goods for purposes of assessment, that will not be allowed to be raised by way of appeal before this court. It should be a determination and there should be an order determining the issue. We find that the Tribunal has actually not determined the issue but has refused to admit the appeal only on the ground that the tax effect involved is Rs. 66,907/-. Therefore the jurisdiction of this Court is not taken away to examine the correctness and validity of the order of the Tribunal, when it involves a substantial question of law. On this aspect also, the view taken by us gets support from the view of the Madras High Court in the case of **Roots Multiclean Limited Vs. CESTAT, Chennai**.

10. In the result, the question of law is answered in favour of

Assessee and against the Revenue that the Tribunal was legally not justified in law and committed an error in invoking its discretion to refuse to admit the appeal. In our view, as the assessee's appeal involve an issue of determination of value of goods for purposes of assessment, it was required to be decided on merits, irrespective of the tax effect. In the result, appeal is allowed. Impugned order passed by the Tribunal is set aside and remitted back to the Tribunal for consideration of the issue involved in the appeal on its own merits.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge