

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/10/2018

C O R A M

THE HON'BLE Mr.JUSTICE S.MANIKUMAR

A N D

THE HON'BLE Mr.JUSTICE SUBRAMONIUM PRASAD

Civil Miscellaneous Appeal Nos.1143 to 1146, 1276 to 1279 of 2018

Civil Miscellaneous Appeal No.1143 of 2018

M/s. Sundaram Finance Ltd
No.21 Patullas Road
Chennai 600 002. ...

Appellant

Vs

Commissioner of Central Excise
and Service Taxability
(Large Tax Payer Unit)
Chennai 600 101. ...

Respondent

Appeal filed under Section 35 G of the Central Excise Act, 1944, against Order No.42057 of 2017, 42060/17, 42061/17, 42062/17 and 42055/17, 42056/17, 42056/17, 42058/17 & 42059/17 dated 14/9/2017, of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For appellant ... Mrs.Pushya Sitaraman
for M/s.Arun Kurian Joseph

For respondent ... Mr.A.P.Srinivasan

C O M M O N J U D G M E N T

These appeals are directed against the order, dated 14/9/2017, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in final order No.42055 - 42062 of 2017.

2. All these appeals are being disposed of, by a common order, since the issue raised in the appeals is one and the same.

3. The appellant assessee is a Non-Banking Financial Institution. They are registered with the Department for

payment of service tax, under various categories. Show cause notices for different periods were issued to them, stating that appellant had issued Fleet Cards to their customers, who had availed vehicle loan facilities from them. With this card, consumers of the appellant could procure fuel from the Petroleum Companies by using the card. Appellant had a prior arrangement with the fuel companies. These Fleet Cards were presented by the customers, at the point of payment, to settle their fuel bill, thereby removing the need for cash. Payments were to be made by the consumers to the Oil Companies.

4. Gist of the show cause notice reads as under:-

"6. On examination of the operations of SFL, it appears that the fleet cards are presented at the point of payment at fueling stations to settle the fuel bill, thereby removing the need for cash, and in the process increasing security. In other words, the fleet card owner can make purchase of fuel using the fleet card, without the need to pay cash immediately. Thus, the fleet card's function is more akin to function of extending credit, as fleet cards offer credit limits like regular credit cards.

7. Further, it appears that, extending credit facility under Fleet card is not the same, as extending loans or advances, in as much as "loans or advances" are meant to signify amounts which are contractually negotiated as such (loans or advances). The financial charges and additional financial charges do not bear any semblance to 'interest' as is normally understood. The finance charges ranges from 18% to 24% p.a., on the outstanding amount from the due date till the date of payment. It appears from the nature of transactions and the percentage of charges that finance charges cannot be legally termed as "Interest on Loan".

8. As observed earlier, apart from various service charges, SFL are collecting Finance Charges/Additional Finance Charges from the card holders. Further, it is also observed that SFL are earning interest on various kinds of loans such as vehicle loan, Home loan etc., and in all these cases interest amount collected on the loan amount is specifically grouped under the Income Account "Interest Income". Whereas the finance charges and additional Finance charges are not considered as "Interest on loan" for accounting purposes but grouped under the head "Fleet Card Income" along with other service charges.

9. Therefore, it appears that the services

rendered by SFL in relating to facilities provided under Fleet card issued to fleet owners for purchase of fuel through the fleet card, are not covered under Section 66 D (n) of the Negative list of services. Also there is no notification providing for exemption for payment of service tax on the above services. From these, it appears that the operation definitely involves an activity carried out by one person viz., SFL to another viz., fleet card owner. Further, the consideration for this activity appears to be the charges mentioned in paragraph 3 supra. As both the above conditions are satisfied, it appears that the fleet card operations carried out by SFL would fall under the purview of the definition of 'service' as given under Section 65 B (44) of the Finance Act, 1994. Further, it appears that the Finance charges, Additional Finance Charges, etc., collected by SFL under the head "Fleet Card Income" are liable to service tax under the Finance Act, 1994. In view of this, it appears that SFL should have discharged Service Tax on the entire fleet card income earned during the period from April 2013 to March 2014."

5. Show cause notices stated that the appellant should have paid service tax from the Fleet Card income received from their consumers and that they have failed to discharge their amount on the service tax amount received from the above activity.

6. Replies were filed to various show cause notice. Basis of the reply which is more or less common and the same reads as under:-

"The fleet card issued under the scheme is different from an ordinary credit card or petro card issued by banks and oil companies, inasmuch as the same is vehicle specific, usable only in authorised petrol outlets and only for purchase of fuel or lubricants, no cash withdrawals are possible and bills are settled by the taxpayer to oil companies. Credit cards have wider scope of usage and less restrictions.

. The fleet cards are issued on execution of loan/hypothecation agreement and the vehicle is taken as collateral. However, credit cards do not have these obligations.

. Since the cards are issued only on the execution of loan agreement, these are in the nature of loans and the finance charges collected

are in the form of interest on loans, which are exempt from service tax.

. They have booked the income from fleet card scheme only under hypothecation loan income under income from operations in their books.

. No monetary benefit is offered to them nor any monetary commitment charged on them by the oil companies, though the card is a co-branded card.

. They further stated that they settle the bills raised by oil companies on daily basis without deduction of any commission, which is not the case in general card transactions.

. They are neither issuer of card nor they are charging any amount for the activity from the issuing bank. Thus, they would not fall under any of the clauses of Sec.65 (33a), viz., credit card related services but only under banking and financial services as lending loans, but the charges being in the nature of interest on loan are not taxable.

. They also tried to distinguish the three clauses of Sec.65 (33a) and the value taxable to service tax in all the three cases and stated that they had not earned any income out of such settlement and the taxable value would not be the entire income of Rs.13,35,62,538/- booked on accrual basis, but only the amount charged by the taxpayer on oil companies and received by the.

. Since income not subject to tax, levy of interest and penalty do not arise."

7. The Assessing Authority, after analysing the service rendered under a normal credit card and fleet card, came to the conclusion that fleet card transactions fall under the more specific classification of 'credit card services' rather than the general 'Banking and other financial services' and therefore the appellant is liable to pay service tax. Holding that the activity squarely falls within the ambit of Section 65 (33a) (iii) of the Finance Act,1994. Appellate Authority, held as under:-

"19. On careful reading of the definition, it is clear that it does not mandate that the taxpayer have to receive any amount from the card issuer. It is sufficient if any service has been provided by them in relation to settlement of any amount transacted through Fleet card. From study of the operations, I find that the fleet cards are used by the card holder at petrol outlets and the amounts incurred are charged to the cardholder's fleet card account maintained by

SFL. As per the agreement between BPCL/IOCL and the Tax payer, the taxpayer have to make payment of the bills to the oil companies within three working days of such utilisation data reaching them in electronic format. A fortnightly bill is raised fleet card wise on the cardholders for the amounts spent, which is subsequently collected from the cardholder. All these activities are obviously in the nature of services rendered in relation to settlement of amounts transacted through fleet card and the amounts charged by SFL on the card holders are clearly in nature of compensation of such services rendered. Consequently, I hold that the impugned activity falls squarely within the ambit of clause (iii) of Section 65 (33a) of the Finance Act, 1994.

20. Further, I find that the argument of the taxpayer that the fleet card transaction is in the nature of loan and the finance charges collected by them are in the nature of interest on loans extended by them and hence not subject to tax, cannot be accepted. Loan is an arrangement wherein the lender gives money or property to a borrower, and the borrower agrees to return the property or repay the money, usually along with interest, at some future point in time. Usually, there is a predetermined time for repaying a loan. However, in the fleet card system, the same credit limit is extended every fortnight and there is no guarantee that the credit facility will be utilised by the card holder. In other words it is quite possible that the card holder may never use the card for any purchase and in that eventuality, the credit limit extended will remain unutilized. The fleet card function cannot therefore, be treated on par with a loan transaction, but can be held more akin to credit card transaction. Credit cards offer credit limit, which is the same in respect of fleet cards also. This credit limit cannot be treated as loan amount, as the same gets repeatedly utilised and paid back, either partially or in full, with the ever remaining possibility that the card will never be used. Further, even in credit cards, interest is charged from the date of transaction, and if the amounts are not paid by the due date, additional charges are collected. All these charges are subject to service tax. Similarly, in fleet cards, the finance charges are recovered from the

date of transaction and additional finance charges are recovered if the amount is not paid by the due date. The nature of charges may vary from card to card or scheme to scheme, but the transaction remain by nature, fundamentally congruent to credit card services. As per clause (a) to sub-Section (2) of Sec.65 A, when for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of Section 65, the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description. Thus, I have no hesitation in holding that fleet card transactions fall under the more specific classification of 'credit card services' rather than the general 'Banking and other financial services'.

(emphasis supplied)

8. Different assessment orders in original were passed, for various show cause notices.

9. In few cases, appeals filed before the Appellate Authority were rejected and in few case appeals were filed directly before the Customs, Excise and Service Tax Appellate Tribunal. We are not going into all those details because the question which arises in all the appeals, is as to nature of the services that has been provided by the appellant. The Tribunal stated that the dispute in the cases relates to the income accruing to the appellant, under the category of finance charge and additional finance charge, from their customers, who were issued with credit facilities and whether this would come within the definition of service or not.

10. The Customs, Excise and Service Tax Appellate Tribunal, after considering the entire issue held:-

a. on examining the basic materials and the conditions for issue of "Fleet Card" in appellant's own website as well oil Company's website. Finding of the original authority that "Fleet cards" operates similar to credit card, authorities to safely to credit card does not require any interference.

b. The benefits given under the Fleet Card, cannot be treated on par with a loan transaction.

c. Advance charges and additional finance charge collected by the appellant, forms part of the taxable value or a taxable service of BOFS/Credit Card Services. Appellant/assessee is liable to pay service tax on the income shown as "finance charges" and the "additional finance charge".

11. It is this order under challenge in the present set of appeals.

12. Department has raised a preliminary objection that the instant issue raised in the appeal is on the classification of the service and its taxability and this issue could be agitated only before the Hon'ble Supreme Court and therefore the appeals are not maintainable.

13. The appeals was fixed for hearing to decide on the issue of maintainability.

14. Learned counsel for the Department would rely on Section 35 G and 35 L of the Central Excise Act, 1944 and Section 83 of the Finance Act. He would submit that since the issue raised in these appeals, has a relation to the classification of the services, the appeal cannot be maintained in the High Court.

15. Learned counsel for the appellant would heavily rely on the judgment of the Hon'ble Supreme Court in NAVIN CHEMICALS MANUFACTURING & TRADING Co. LTD Vs. COLLECTOR OF CUSTOMS {1993 (68) ELT 3 (SC)}.

16. Learned counsel appearing for the assessee would contend that term rate of duty as mentioned in 35 G of the Central Excise Act, 1944, would apply only when there is a dispute regarding a rate and would not extend to an issue as to whether the transaction is taxable at all.

17. Mrs. Pushya Sitaraman, learned Senior Counsel appearing for the appellant would submit that in the present case, appellant's transaction is one of Finance charges and Additional Finance Charges arising out of a loan transactions and therefore the service tax is not payable.

18. Appellant would also submit that Section 35 L of the Central Excise Act, 1944, was amended only in 2014 and since the period of dispute was prior to 2014, right of appeal to High Court cannot be taken away, as a right of appeal is a vested right and on the date when the show cause notice was issued, an appeal was provided to the High Court. According to the learned Senior Counsel, unamended provision would continue to apply and 35 L of the Central Excise Act, 1944, could not be understood to take away the vested right of the appellant to appeal to this Court.

19. Learned counsel for the appellant would heavily rely on the judgments rendered in

(i). HOOSEIN KASAM DADA (INDIA) LTD. Vs. State of Madhya Pradesh {AIR 1953 SC 221};

(ii). GARIKAPATI VEERAYA Vs. N.SUBBAIYA CHOUDHURY {AIR 1957 SC 540};

(iii). VIDEOCON INTERNATIONAL LTD Vs SECURITIES EXCHANGE BOARD OF INDIA (Civil Appeal No.117 of 20015) of the Hon'ble Supreme Court.

20. Heard both the counsels on the issue of maintainability.

21. Appeal has been filed on the following substantial questions of law:-

(i). Whether the Tribunal was right in treating the financing provided by the appellant by way of a loan agreement entered into with the customer and backed by the vehicle as collateral security as credit card services, when the fleet card was not issued by the appellant but only by the Oil Companies?

(ii). Whether the Tribunal was right in holding that finance charge and additional finance charges on fleet cards does not amount to interest on loan?

(iii). Whether the financing of fleet card payments, cannot be treated as a loan merely because the amounts are not disbursed at one time or in instalments, but allowed as a credit limit for fixed periods?

(iv). Whether the Tribunal was right in not deleting the penalty under Section 76 having given a finding that there was no suppression of facts and deleting the demand for the extended period?"

22. Undoubtedly, the issue in this case is, as to whether fleet cards have been provided is a part of loan transaction or is it a credit card facility.

23. Section 35 G, Section 35 L of the Central Excise Act and Section 83 of the Finance Act, 1944 reads as hereunder:-

Section 35G. : 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.

(2) The Principal Chief Commissioner of Central Excise or Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-Section shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Chief Commissioner of Central Excise or Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-Section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-Section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-Section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in

accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

1. Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section.

Section 35L : Appeal to the 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 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 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.

Section 83 of the Finance Act, 1994:

Application of certain provisions of Act 1 of 1944 -The provisions of the following section of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to

service tax as they apply in relation to a duty of excise: -

Sub-section (2A) of section 5A, sub-section (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 350 (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

24. The Hon'ble Supreme Court in Navin Chemicals Manufacturing & Trading Company Limited Vs. Collector of Customs {1993 (68) ELT 2 (SC)} has observed as under:-

"8. Before we consider whether the case of the appellant falls within the said expression, we must note that Section 130, Sub-section (1) and Section 130-E, Clause (b) of the said Act also use the said expression and they refer respectively to the Statement of Case to the High Court on a reference by CEGAT and an appeal to the Supreme Court directly. Section 130 (1) states that the Collector of Customs or the other party may require CEGAT to refer to the High Court any question of law arising out of an order under appeal before it provided it is not an order relating among other things to the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment'. Clause (b) of Section 130-E 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 a relation to the rate, of duty of customs or to the value of goods for purposes of assessment'.

9. The importance of the present appeal lies not so much in deciding which appeals can be heard by a member of CEGAT sitting singly and which by a Special Bench thereof as in determining where a reference can be made by CEGAT to the High Court and in which cases an appeal against an order of CEGAT can be filed directly before the Supreme Court. Where an appeal lies to the Supreme Court, the necessity of the reference on a question of law to the High Court is obviated. An appeal to this Court is provided where, as aforementioned, the questions in issue, relating to the rates of duty or the value of goods for the purposes of assessment, have relevance not only for the parties there concerned but for other importers as well.

10. Section 129-D deals with the powers of the Central Board of Excise and Customs and the Collector of

Customs to call for and examine the record of any proceedings before authorities subordinate thereto and examine the legality or propriety thereof and also to direct such authorities to file appeals. Sub-section 5 was added to Section 129-D by the Customs & Central Excise Laws Amendment Act, 1988 and it reads thus:

(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation - For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question.-

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

11. It will be seen that Sub-section 5 uses the said expression 'determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this

Explanation expressly confines the definition of the said expression to Sub-section 5 of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have, given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT : does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate of duty applicable to the goods or to the value of the goods."

25. It is pertinent to note that Section 129 D of the Customs Act, is similar to Section 35 G of the Central Excise Act.

26. A Hon'ble Division Bench of the Karnataka High Court in C.C.E., MANGALORE Vs. MANGALORE REFINERIES & PETROCHEMICALS LTD {2011 (270) ELT - 49 (Kar.)}, observed as hereunder:-

"41. Therefore, the expression 'rate' is often used in the sense of standard or measure. 'Rate' generally is an impost, usually for current or recurrent expenditure, spread over a district or other local area and is distinct from an amount payable for work done upon or in respect of particular premises. 'Rate' is defined by Webster to be the price or amount stated or fixed for anything. The word 'rate' includes any toll, due, rent, rate or charge. It means the scale or amount of any other charges. The word 'rate' is used with reference both to a percentage or proportion of

taxes, and to a valuation of property. 'Rate' is used in an Act declaring that the Legislative Assembly shall provide by law for a uniform and equal rate of taxation and assessment, applies to the percentage of fixation, as used in connection with 'taxation' and to the valuation of the property, as used in connection with 'assessment'. It is a valuation of every man's estate or setting down how every one shall pay, or be charged with, to any tax. By the use of the expression 'rate' a relation between the taxable income and the tax charged is intended, but the relation need not be of the nature of proportion or fraction. The Explanation to sub-section (5) of Section 35E of the Central Excise Act, the expression includes the determination of a question relating to the rate of duty, to the value of goods for the purposes, of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for the purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. Determination of rate of duty in relation to any goods include determination of a question whether any goods or not, whether the process if any undertaken in the service centre amounts to manufacture or not, and if the goods produced during that process are excisable goods or not would fall within meaning of the expression 'determination of the rate of duty of excise or the value of the goods for the purposes of assessment of duty' used in Section 35G(1) and Section 35L(b) of the Act. Therefore, the phrase 'rate of tax' does not mean fraction of tax payable because what is the tax payable i.e., fraction payable is decided by the legislature. Once that is prescribed by the legislature in the Act, the Court cannot sit in judgement and alter or modify the said rate of tax.

The Court has no jurisdiction to go into the correctness or otherwise of the rate of tax payable in the sense the rate prescribed by the legislature. Therefore, the argument that the rate of tax means only the rate at which tax is payable or a fraction is unsustainable.

42. Broadly the following disputes do not fall within the jurisdiction of High Court under Section 35(g) of the Act :-

(a) Dispute relating to the duty of excise payable on any goods.

(b) The value of the goods for the purposes of assessment.

(c) A dispute as to the classification of goods.

(d) Whether those goods are covered by an exemption notification or not.

(e) Whether the value of goods for the purposes of assessment is required to be increased or decreased.

(f) The question of whether any goods are excisable goods or not.

(g) Whether a process is a manufacturing process or not, so as to attract levy of excise duty.

(h) Whether a particular goods fall within which heading, sub-heading or tariff item or the description of goods as mentioned in column No.3 of the Central Excise Tariff Act, 1985.

43. From the aforesaid discussion, it is clear that an order passed by the Appellate Tribunal relating to the determination of any question having relation to the rate of duty of excise or to the value of goods for the purposes assessment lies to the Supreme Court under Section 35L (b) the Act and not to the High Court under Section 35(G).

44. The intention behind this bifurcation of jurisdiction between the Apex Court and the High Court seems to be that more often than not, any decision on these aforesaid aspects not only affects the interest of the manufacturers who are parties thereto, but also to the manufactures of those products throughout the country. In a country governed by Parliamentary legislation because of the territorial bifurcation in forming states and because of the divergent opinion which is possible, the excise duty payable would vary from place to place. In order to bringing uniformity in the levy of excise duty throughout the country and consequently to see that the country's finance is

not affected, the Parliament has vested the jurisdiction to decide the disputes with the Apex Court. Therefore, we see a duty policy underlining this bifurcation of the jurisdiction between the Apex Court and the High Courts. All other matters other than what is set out above, which relates to the individual manufacturers and all disputes based on assessment orders which have attained finality, such as the benefits to which they are entitled to, refunds, duty drawbacks, rebates, etc., which relate to a particular manufacturer falls within the jurisdiction of the High Courts."

27. Judgment of the Karnataka High Court stated supra, has been quoted with approval by a Hon'ble Division Bench of this High Court in THEJO ENGINEERING SERVICES PVT LTD Vs. COMMISSIONER OF CUSTOMS EXCISE, CHENNAI - II {2017 (349) ELT - 113}, wherein the above mentioned four paragraphs have been quoted.

"11. Keeping the above principles enunciated by the Supreme Court as also the disputes that fall within the jurisdiction of the High Court, as culled out by the Karnataka High Court in the decision in Mangalore Refineries case 9supra) in mind, a look at the facts of the case clearly establish that the issue pertains to rate of duty that is payable by the respondent in such a scenario. In view of the above position of law, which exempts appeal to be entertained by the High Court in relation to rate of duty, the objection as raised by the respondent is liable to be sustained in view of the decision of the Supreme Court in Navin Chemicals case (supra), as also the judgement of the Karnataka High Court in Mangalore Refineries case (supra). The abovesaid view has also been followed by this Court in Commissioner of Central Excise V Vadapalani Press (2014-TIOL-2208-HC-MAD-CX=2015 (320) E.L.T. 238 (Mad.).

28. Applying the above said judgment, it is clear that an appeal is not maintainable before this Court.

29. The second submission of the appellant that right of appeal to this Court was available under the un-amended Section to 35 L of the Central Excise Act, 1944 and the amendment could not take away from the right of appeal is also not tenable.

30. Right of appeal has not been taken away. Instead of an appeal in the High Court, an appeal would lie to the Hon'ble Supreme Court. Under the pre-amended regime, there was no second appeal provided to the Supreme Court. Therefore, the

principle laid down by the Supreme Court in GARIKAPATI VEERAYA Vs. SUBBAIYA CHOUDHURY AIR 1957 SC 540, would not apply here. The Act envisaged one appeal and now the legislature has now amended provision and the forum which has been now vested with the power to hear the appeal on the issue of classification is the Hon'ble Supreme Court and the right to hear an appeal relating to classification has been specifically taken out from the High Court and has been given to the Hon'ble Supreme Court. Since only the forum to hear the appeal is changed there is no question of any vested right being taken away. The contention of the appellant that pre-amended provision must apply to them as it takes away the right of appeal does not have any force.

31. In the result, Civil Miscellaneous Appeals are not maintainable, in this High Court and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mvs/gsp.

To

Commissioner of Central Excise and Service Taxability
(Large Tax Payer Unit)
Chennai 600 101.

+8cc to Mr.Arun Kurian Joseph Advocate, S.R.No.69507 to 69514

Civil Miscellaneous Appeal Nos.
1143 to 1146, 1276 to 1279 of 2018

PPA (CO)
GN(31/12/2018)

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