IN THE HIGH COURT OF JUDICATURE AT PATNA
TAX CASES No.2 of 2010

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Prabhat Zarda Factory India

... ... Petitioner/s

Versus

Commissioner of Central Excise Patna having its Office at Central Revenue Building Annexe, Birchand Patel Marg, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.D.V.Pathy, Adv.
For the Respondent/s : Mr.Archana Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 18-07-2019

Heard Mr. D.V. Pathy, learned counsel for the petitioner and Mr. S.P. Tripathi, learned Senior Standing Counsel for the Central Excise Department.

This tax case was filed by invoking the provisions of Section 83 of the Finance Act, 1994 (hereinafter referred to as 'the 1994 Act') read along side Section 35H of the Central Excise Act, 1944 (hereinafter referred to as 'the 1944 Act'). What we note from the enactment(s) in question and having perused the stipulations present therein is, that although Section 83 of 'the 1994 Act' recognizes the enabling provisions present in Section 35H of 'the 1944 Act' but a cursory glance to 'the 1944 Act' would confirm that this provision of Section 35H stands deleted.

According to Mr. Pathy, this was done because a constitution of a National Tax Tribunal to consider such matters, was conceived but that never got into motion. He submits that apart there from, the issue in hand relates to a period when this provision was much in existence.

Be that as it may, the fact remains when this Tax Case was filed in the year 2010, the provisions of Section 35H stood deleted. The other aspect of the matter is that the judgment and order dated 19.02.2002 of the Tribunal whereby the claim of the petitioner was rejected and the complete text of which is placed on record by way of supplementary affidavit, came up for consideration before the larger bench of the Tribunal in the case of **Larsen and Toubro Ltd. versus Commissioner of Income Tax, Chennai** and vide judgment and order reported in **2006(3) S.T.R 321**, a copy of which is enclosed at Annexure-5 to the Tax Case, the larger bench of the Tribunal having noted the disagreement present in the two division bench of the Tribunal in so far as the opinion expressed in the case of the petitioner is concerned on the interpretation of a'Clearing and Forwarding Agent'overruled the judgment passed in the case of the appellant and remitted the appeals which fell for consideration before the division bench for its disposal.

What Mr. Pathy, canvasses is that once the division bench judgment of the Tribunal whereby the claim of the petitioner had been negated, was overruled by the larger bench, the petitioner became entitled to his reliefs. We would not express ourselves on this submission because before us, the petitioner seeks a direction to the Tribunal to refer the substantial question of law which is raised in the case. Now besides the fact that Section 35H providing for such reference stands deleted, the other prayer also cannot be entertained because the very judgment rendered by the Tribunal in the case of the petitioner has been overruled by a larger bench. In other words, the issue before us is prima facie rendered academic.

The submission of Mr. Pathy is that the issue is not actually rendered infructuous rather has been answered in favour of the petitioner by the larger bench.

In view of the larger bench decision, Mr. Pathy prays for disposal of the matter to enable the petitioner to take recourse to such remedy that may be available to him in law for espousing the grievance in the light of the position settled by the larger bench.

We do not think that Mr. Tripathi learned Senior Counsel for the Department may have any objection because we are not expressing our opinion on the plea of reference so made rather in case the petitioner intends to avail of the remedy that may be available to him in view of the larger bench decision, he shall be at liberty to do so.

With the observations above, we dispose of this Tax Case.

(Jyoti Saran, J)

(Partha Sarthy, J)

Bibhash

AFR/NAFR	NAFR
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