IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

STA No.5 of 2017(O&M)
Date of decision :30.1.2019

Commissioner of Central Excise and Service Tax Adjudication, New Delhi

.....Appellant

Versus

Samit Enterprises Pvt.Ltd. Gurgaon

..... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr.Amit Goyal, Advocate for the appellant.
Mr.Sourabh, Advocate for
Mr.Puneet Bansal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. The appellant has approached this Court under Section 35G of the Central Excise Act, 1944 (in short-'the Act') read with Section 83 of Finance Act against the order dated 22.4.2016, Annexure A.3, passed by the Customs, Central Excise & Services Tax Appellate Tribunal, New Delhi in Service Tax Appeal No.ST/56517/2013 claiming that the following substantial questions of law arise for consideration:

"(i) Whether when the effective use, consumption and enjoyment of service has taken place on the soil & territory of India, can the service be considered as exported only on the basis that consideration for the same has been received from outside India?

(ii) Whether the "accrual of benefit" should be regarded as a consideration for determining the place of usage or consumption of the service under the Finance Act and rules?

(iii) Whether the consideration received in Indian Rupees by the assessee for providing a set of services India buyers in India, amounts to export of service?"

2. Upon notice of motion having been issued, learned counsel for the respondent has appeared and raised preliminary objection regarding the maintainability of the appeal on the ground that the matter involved herein relates to classification/taxability and, therefore, appeal was maintainable before the Supreme Court in view of Section 35L(2) of the Act.

3. It would be expedient to notice Section 35L of the Act which reads as under:

"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 Ist 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 or 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."

3. In view of above, learned counsel for the petitioner submitted that he has instructions to withdraw

the appeal with liberty to the appellant to file an appeal before the Apex Court.

4. Dismissed as withdrawn.

5. It shall, however, be open to the appellant to take recourse to the remedies, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

30.01.2019 (HARNARESH SINGH GILL)
KD JUDGE

Whether speaking / reasoned: Yes / No
Whether Reportable: Yes / No