

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.03.2020
Pronounced on	10.03.2020

CORAM

THE HON'BLE Dr. JUSTICE VINEET KOTHARI
AND
THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

C.M.A.Nos.798, 799 & 800 of 2018 and
C.M.P.Nos.6650, 6651 & 6652 of 2018

The Commissioner of GST & Central Excise,
Chennai Outer,
No.2054, Newry Tower, 12th Main Road,
Anna Nagar, Chennai - 600 040.

... Appellant in all CMAs

Vs.

M/s.The Glovis India Private Limited,
F-98, 8th Main Road, SIPCOT Industrial Park,
Irrungattukottai, Sriperumbudur,
Kancheepuram - 602 105
Tamil Nadu

... Respondent
in all CMAs

Appeals filed under Section 35G of the Central Excise Act,
1944 against the Final Order No.40787 of 2017 dated 15.05.2017
and Final Order Nos.41415 & 41416 of 2017 dated 02.08.2017 on
the file of the CESTAT, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas,
Senior Standing Counsel

For Respondent : Mr.N.Venkataraman, Senior Counsel
assisted by M/s.P.Jayalakshmi
for the Assessee

COMMON JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

The Revenue Department has filed the present Appeals
raising certain alleged substantial questions of law arising
from the order of the learned CESTAT in the orders dated
15.05.2017 and 12.08.2017. The present Appeals were admitted

by a Coordinate Bench of this Court on 09 April, 2018 and the said questions are as follows:

"1. Whether the availment of CENVAT credit under Rule 3 of CENVAT Credit Rules, 2004 is legal when the activity undertaken by the assessee do not amount to manufacture as contemplated in Section 2 (f) (iii) of the Central Excise Act, 1944?

2. Whether the activity of re-packing which is not packing in "unit containers" by the assessee would amount to manufacture as contemplated under Section 2 (f) (iii) of the Central Excise Act, 1944, for the purpose of availing CENVAT Credit?

3. Whether the activity of re-labeling with the name and without any hologram or marking while the re-labeling being done only for the logistics purpose by the assessee would amount to manufacture as contemplated under Section 2 (f) (iii) of the Central Excise Act, 1944, for the purpose of availing CENVAT Credit.

4. Whether the treatment to the already marketable products by the assessee would amount to manufacture as contemplated Section 2(f) (iii) of the Central Excise Act, 1944, for the purpose of availing CENVAT Credit.

5. When the assessee being both a manufacturer and a trader, mere filing of a Return under Rule 12 of Central Excise Rules, 2002 would amount to disclosure of all the details of CENVAT Credit and therefore, extended period of limitation is not invocable?"

2. When the matter was taken up for hearing, the learned Senior Counsel appearing for the Respondent/Assessee Mr.N.Venkataraman raised a preliminary objection of the maintainability of the present Appeals filed by the Revenue under Section 35G of the Central Excise Act, 1944 in this Court and submitted that as per the provisions of Section 35L, particularly Section 35L(2) of the Central Excise Act, 1944 (in short 'the Act') the question of excisability also is within the jurisdiction of the Hon'ble Supreme Court and not of the High Court as per Section 35G of the Act and therefore, the present Appeals filed by the Revenue are not maintainable and the same deserves to be dismissed on the said preliminary objection. On the said preliminary objection, he relied upon the following judgments:-

(i) Commissioner of C. Ex. Pondicherry Vs. CESTAT, Chennai, (2016) 44 S.T.R. 576 (Mad.)

- (ii) Commissioner of Customs, Chennai Vs. Ashu Exports, (2009) 240 E.L.T. 333 (Mad.)
- (iii) Commissioner of C. Ex., Chennai- II Vs. Vadapalani Press, (2015) 320 E.L.T. 238 (Mad.)
- (iv) Thejo Engineering Services Private Limited Vs. Commissioner of C. Ex. Chennai-II, (2017) 349 E.L.T. 113 (Mad.)
- (v) SRF Ltd. Vs. CESTAT, Chennai, (2017) 350 E.L.T. 33 (Mad.)

3. On the other hand, the learned counsel for the Appellant/ Revenue Mr. A.P. Srinivas relied upon the decision of the Hon'ble Supreme Court in the case of Navin Chemicals Mfg. & Trading Co. Ltd. Vs. Collector of Customs, [1993 (4) SCC 320] to make a feeble effort to maintain the present Appeals before this Court in view of Section 35G of the Act.

4. We have heard the learned counsels and given our earnest consideration to the Judgments relied upon by both sides and the provisions of the Act.

5. Let us first quote both the relevant provisions of the Central Excise Act, 1944 viz., Section 35G and 35L for ready reference.

"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.

35L. Appeal to the Supreme Court

[(1) An appeal shall lie to the Supreme Court from -

[(a) any judgment of 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.

Inserted by Finance (No.2) Act, 2014, w.e.f. 6-8-2014 [(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.]"

6. We find considerable force in the preliminary objection of the learned counsel for the Respondent/Assessee, particularly after insertion of sub-section (2) in Section 35L of the Act by Finance Act, 2014 with effect from 06.08.2014 whereby for the purposes of Chapter VI-A comprising from Sections 35 to 36 including clause 35A to 35R which provide for the mechanism of appeals under Chapter VI-A of the Central Excise Act, 1944 to the aggrieved persons in the said Chapter and sub-section (2) of Section 35L of the Act clearly now provides with effect from 06.08.2014 that 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 to goods for the purpose of assessment. This sub-section (2) of Section 35L, in our opinion, as rightly contended by the learned counsel for the Respondent/Assessee, is merely of a clarificatory nature, because without first determining the question of excisability itself or not, the question of determination of rate of duty cannot arise and the question of valuation of goods will be academic, unless first the Court arrives at the conclusion that the particular transaction of clearance of goods amounts to 'manufacture' or not and whether it is excisable at all or not. Therefore, in our opinion, Section 35L(2) of the Act as amended has clarified the scope of appeal before the Hon'ble Supreme Court, while dealing with the questions of rate of duty and valuation of goods to be decided by it under Section 35L of the Act.

7. The two comparative provisions in Chapter VI-A of the Act, 1944 viz., 35G and 35L of the Act are mutually exclusive. Therefore, what lies within the domain of jurisdiction of Hon'ble Supreme Court, cannot obviously lie within the jurisdiction or domain of High Court. Obviously, no conflict or overlapping of the jurisdictions could have been envisaged by the Legislature or the Parliament.

8. Therefore, Section 35G of the Act made an exclusion in sub-section (1) itself by the bracketed portions which read "not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of exercise or to the value of goods for purposes of assessment". This exclusion was provided with reference to Section 35L of the Act, which conferred jurisdiction dealing with appeals before the Hon'ble Supreme Court. Section 35G of the Act has an additional requirement that the High Court should be satisfied that the case involves a substantial question of law. An order or judgment passed by High Court under Section 35G of the Act itself is appealable per se before the Hon'ble Supreme Court under Section 35L(1)(a)(i) of the Act meaning thereby without the substantial question of law even the appeal before the Hon'ble Supreme Court will not be maintainable.

9. However, the question before us in the present appeals is as to whether the present appeals which raises a question of excisability itself or not, will be appealable before the Hon'ble Supreme Court or not. For that purpose, let us have a look on the findings of the learned Tribunal, in which the said controversy has arisen.

Extract from the Order of Tribunal:

"8. The issue revolves around the question whether the activity undertaken by the appellants tantamount to deemed manufacture as per Section 2(f)(iii) of the Central Excise Act, 1944. For better appreciation, the relevant section is reproduced:-

"Section 2

(f) "manufacture" includes any process,-

(i)

(ii)

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,] and the word "manufacturer" shall be construed accordingly and shall include not only a person who employer hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account".

[Emphasis supplied]

9. Undisputedly, the parts/components and assemblies of vehicles exported by the appellants fall under Chapter Heading 8712, 8713, 8715 and 8716

and are covered under the Third Schedule of CETA, 1985. Therefore, the first ingredient in sub-clause (iii) of Section 2(f) is satisfied.

10. Now let us proceed to examine the various activities undertaken by the appellants before export of the products. The learned counsel has given a detail description with pictures wherein the various stages of the activity is sufficiently brought out with all minute details.

11. The process of manufacture can be diagrammatically represented as under:-



12. When the appellant places purchase orders, the vendors will supply goods in metal pallets/trolleys. The goods in these metal pallets/trolleys are sent by the vendor in plastic crates/bins. The next stage is affixing identification tag on the goods received from the suppliers. Such identification tag will contain (1) the appellants purchase order number; (2) vendor name; (3) part number; (4) part name and (5) part quantity. The vendors also send the documents / delivery sheet along with the goods. The next stage is to prepare the GRN for goods received from vendors. GRN is prepared by scanning the bar code on the delivery sheet and entering the receipt from the vendors. After GRN process, the line feeding sheet/packing ticket will be generated by the system for further manufacturing/packing purpose. The line feeding sheet and picking tickets are sent in the trolley for production / packing line. The parts are then physically checked for quality and quantity in the "Parts Receiving Section" before being stocked in the "Parts Storage Area". The next stage is to

prepare the wooden pallets for packing. After preparing wooden pallets packing is done in cartons. This packing is done by first placing the bottom cap on the wooden pallet and then carton sleeve is placed on the bottom cap which is laid over the wooden pallet. A poly vinyl sheet (rust prevent sheet) is then covered inside the sleeve. Partition sheets are kept inside this sleeve. A single layer of predetermined carton sleeve with partition is then ready for packing. The metal pallet with goods received from vendors are kept near to the carton sleeve box for starting the packing process. The goods received from vendors are taken out from the metal pallets and stuffed inside the carton sleeve. Vinyl sheets are used to cover over the partition sheets with goods inside the carton sleeve. Top cover is provided on the carton sleeve and the goods supplied by vendors become packed in carton. The goods then packed inside the carton sleeve is ensured with the picking ticket before closing the packing box. The picking ticket will be scanned for generating the shipping mark sheet. After ensuring the details, the picking ticket will be affixed on the packed box. Thus, after packing, the shipping mark label is affixed on the box. This shipping mark label contains customer name, customer destination, customer order description, customer order number, case number, case dimensions, date of packing, manufacturer name. The packing list is also provided at the time of export which contains customer's order number, part number, party name and quantity.

13. Three types of packing are undertaken depending on the type of automobile parts. They are: (a) carton box packing, (b) wooden box packing and (c) metal pallet packing. The packed carton box is stuffed inside the container for export.

14. The above process of labeling and packing explained by the learned Senior Advocate, in our view would satisfy the ingredients of deemed manufacture under Section 2(f)(iii) of Central Excise Act, 1944. The submission of learned AR that such packing is only for the purpose of transportation and that the labelling is only for the purpose of identification are too flimsy and not backed by any legal basis. It appears that the learned AR is confused with the mention of the words 'retail sale price' and 'labeling' in section 2(f)(iii) of the definition of manufacture. It is contended by the learned AR that since the label affixed does not give any information to a consumer

and is only to facilitate assembly of vehicle at Hyundai, Turkey, the activity of labeling does not amount to manufacture. This argument does not find favour with us. The Standard of Weights and Measures Act, 1987 though provides for affixing the Retail Sale Price on packaged commodities, the said legislation has nothing to do with the question whether the activity undertaken by the assessee amounts to manufacture or not. As per sub-clause (iii) of the said definition, packing/repacking or labelling or re-labelling would amount to the process of manufacture and the appellants have been able to successfully establish that such activities have been undertaken by them after purchase of the goods from various vendors till the goods are exported. For these reasons, we hold that the activities undertaken by the appellant amounts to manufacture and they are liable to avail CENVAT credit on the inputs/input services used in the export of goods. The impugned order demanding to recover/reversal of the credit is unjustified and requires to be set aside which we hereby do accordingly."

10. From the above extract from the order of the learned Tribunal, it is fairly clear that the question whether the activity carried out by the Assessee amounts to "deemed manufacture" or not is the basic question involved in the present appeals. While the Tribunal decided in favour of Assessee that the activity amounts to 'manufacture', the Revenue seeks to raise a question and doubt it on that ground that the Assessee only carried out some kind of packing/ repacking or labelling of goods not amounting to the process of 'manufacture'. According to Revenue, the concept of 'Deemed Manufacture' is envisaged in the extended definition of 'manufacture' as defined in Section 2(f)(iii) of the Act. Section 2(f) is quoted below for ready reference.

"[(f) "manufacture" includes any process,-

- (i) incidental or ancillary to the completion of a manufactured products;
- (ii) which is specified in relation to any goods in the

section or Chapter notes of [the Fourth Schedule] as amounting to [manufacture; or]

- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration

or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,] and the word "manufacturer" shall be construed accordingly and shall include not only a person who employer hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;]"

11.It is quite obvious that clause (iii) was inserted in the definition of "manufacture" in Section 2(f) of the Act by Finance Act, 2003 with effect from 01.03.2003 which clearly by a deeming fiction included in III Schedule the activities which only involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers etc. In view of such extended definition now incorporated in the Statute itself, we do not find any justification for the Revenue to raise a question on this as to whether the activity carried out by the Assessee will amount to manufacture or not.

12.Be that as it may, since we are dealing only with the preliminary objection raised by the Assessee before us, we should naturally not express any opinion on the questions of law sought to be raised by the Revenue in the present appeals and that should be left to be raised at the appropriate forum, which, in our opinion, will be an appeal under Section 35L of the Act before the Hon'ble Supreme Court of India.

13.Therefore, as indicated above, since the question of excisability under Central Excise Act and dutiability under the Customs Act are the basic questions at the root of the matter, before deciding the questions of rate of duty and valuation of goods, which as per expanded scope of 35L of the Act, should naturally now lie before the Hon'ble Supreme Court of India. Even before the said amendment in law took place, the Division Bench of Karnataka High Court in two decisions dealing with both the enactments viz., Excise Law and Customs Law made such observations and held that such appeals are maintainable before the Hon'ble Supreme Court of India.

(i) In the case of C.C.E., Mangalore Vs. Mangalore Refineries & Petrochemicals Limited, (2011) 270 E.L.T. 49 (Kar.)], the Division Bench of the Karnataka High Court, with great respects, rightly concluded in para 41 and 42 of the Judgment, which we quote below that whether the goods are covered by an Exemption Notification or not and whether the goods are excisable goods or not will be a question which does not fall within the jurisdiction of High Court under Section 35G of the Act.

"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 of 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 the 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 judgment 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."

(ii) Similarly, while dealing with the Customs Act provisions, the Karnataka High Court in a Judgment authored by the same Hon'ble Judge [Justice Mr.N.Kumar, J.] in the case of Commissioner of Customs, Bangalore V. Motorola India Limited, (2012) 275 E.L.T. 53 (Kar.), delivered about a year after the previous judgment, reiterated the similar position in para 40 and 41 as under:

"40. Therefore, the expression 'rate' is often used in the sense of a 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 of fraction. The Explanation to sub-section (5) of Section 129D of the Customs Act, 1962, 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 there is an import or not the process if any undertaken in the service centre amounts to manufacture or not, whether there is an "export" or not and if the goods imported or exported during are dutiable goods or not would fall

within the meaning of the expression 'determination of the rate of duty of Customs or the value of the goods for the purposes of assessment of duty' used in Section 130 and Section 130E 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 judgment 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.

41. Broadly the following disputes do not fall within the jurisdiction of High Court under Section 130 of the Act:—

- (a) Dispute relating to the duty of customs 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) Whether what is imported or exported is goods which attracts customs duty."

14. In the previous judgment, while the eight categories of dispute were in the exclusion category of jurisdiction of High Court, were reduced to six in the later judgment under Customs Act for the obvious reasons that the last two categories in the previous judgment about the 'manufacturing' concept and Tariff Item or the description of goods as mentioned in column No.3 of the Central Excise Tariff Act, 1985, were not relevant under the Customs Act, 1962. We respectfully agree with these conclusions arrived at by the Karnataka High Court.

15. A similar approach was made even by Madras High Court itself in the case of Thejo Engineering Services Private Limited V. Commissioner of Central Excise, Chennai- II, (2017) 349 E.L.T. 113 (Mad.) and the Coordinate Bench of this Court following the decision of the Hon'ble Supreme Court in the case of Navin Chemicals Manufacturing and Trading Company Limited V. Collector of Customs, (1993) 68 E.L.T. 3 (S.C.)

held that the issue whether the excise duty is payable on the repacking of cold vulcanizing solution and hardener heading, there cannot be rate of duty imposable thereon and therefore, in view of the aforesaid Supreme Court decision and the decision of the Karnataka High Court in the case of Mangalore Refineries (supra), the Coordinate Bench of this Court dismissed the Appeal of the Assessee as not maintainable before High Court under Section 35G of the Act. The relevant paras 7, 8, 11 and 12 from the said Judgment are quoted below for ready reference.

"7. Insofar as the present appeal is concerned, challenge is made by the assessee, who has approached this Court, on the ground that excise duty is not payable on repacking of cold vulcanizing solution and hardener, while the Department insists that, the said process amounts to manufacture and hence, liable to excise duty.

8. The Supreme Court in Navin Chemicals Manufacturing and Trading Co. Ltd. v. Collector of Customs - 1993(68) E.L.T. 3 (S.C.), considering the scope of the High Courts to entertain appeal where the rate of duty is under challenge, held as under:-

"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."

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 its decision in Mangalore Refineries case (supra) 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 judgment 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.).

12. In the above circumstances, while this Court is not inclined to deal with the matter, while disposing off the present appeal as not maintainable, is inclined to grant liberty to the appellant/assessee to pursue the matter before the Supreme Court, if so advised."

16. To the same effect, the other judgments of Madras High

Court also of the different Benches of this Court and their citations as under:

- (i) Commissioner of Central Excise V. Vadapalani Press, (2015) 320 ELT 238 (Mad.);
- (ii) Commissioner of Customs, Chennai Vs. Ashu Exports, (2009) 240 E.L.T. 333 (Mad.) and
- (iii) Commissioner of Central Excise V. CESTAT, Chennai, (2016) 44 STR 576 (Mad.).

17. In view of the aforesaid legal position and particularly the amendment in the provisions of Section 35 L (2) akin to Section 130 of the Customs Act, we are of the clear opinion that the issues raised in the present Appeals are governed by the domain jurisdiction of Hon'ble Supreme Court of India and the present Appeals filed by Revenue, cannot be maintained before this Court.

18. On a demur, we feel that the issues in the restricted scope of Appeals maintainable before the High Court under Section 35G of the Central Excise Act and Section 130 of the Customs Act would be limited to questions like:-

- (a) Extended period of limitation invoked for underpayment of duty or erroneous refunds;
- (b) Refunds made to Assessee are denied;
- (c) Imposition of Penalty
- (d) Interest claimed by Revenue or by Assessee on refund;
- (e) Confiscation of goods and redemption fines;
- (f) Clandestine Removal without payment of duty;
- (g) Cenvat or Modvat issues (in case of Central Excise);
- (h) Redemption fine and Penalty (in case of Customs);
- (i) All Customs Broker License matters under the Regulations (CBLR);
- (j) Issues relating to Rebate, Drawback etc.

19. These issues giving rise to question of law can be considered by High Court under Section 35G of the Act. The issues of rate of duty or valuation or the root questions whether the taxable event in the form of 'manufacture' for attracting levy of duty or not are the questions which lie within the domain jurisdiction of Hon'ble Supreme Court of India.

20. Therefore, under these circumstances, we uphold the objection of the Respondent/Assessee raised in the present case and with a liberty to the Appellant/Revenue to file an Appeal before the Hon'ble Supreme Court of India raising such questions of law, we dismiss the present Appeals filed by Revenue as not maintainable. No order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.
2. The Commissioner of GST & Central Excise, Chennai Outer, No.2054, Newry Tower, 12th Main Road, Anna Nagar, Chennai - 600 040.

+1cc to Mr.S.Muthuvenkataraman, Advocate, S.R.No. 21286

C.M.A.Nos.798 to 800 of 2018

VD(CO)
GN(25/06/2020)

सत्यमेव जयते

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