
(2005) 12 DEL CK 0026
In the Delhi High Court
Case No : CEAC 39 of 2005

Bombay Snuff P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G, 35G(3), 36
Constitution of India, 1950 — Article 226

Citation : (2005) 125 DLT 605 : (2006) 86 DRJ 300 : (2006) 194 ELT 264

Hon'ble Judges : T.S. Thakur, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Prabhat Kumar, for the Appellant; Bobby Lao and Poonam Lao, for the Respondent

Judgement

T.S. Thakur, J.—An objection, touching the territorial jurisdiction of this Court to entertain this appeal u/s 35G of the Central Excise Act, 1944, has been raised by the respondents on the threshold. The appeal, should according to the respondents, have been filed before the High Court at Mumbai exercising jurisdiction over the place where the appellant is carrying on its manufacturing business. The fact that the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) who has passed the impugned order is situate in Delhi, does not, according to the respondents, confer jurisdiction upon this Court to entertain this appeal and determine the issues arising in the same. The facts giving rise to the controversy may at this stage be summarised as under :

2. The appellant company has set up a factory in Industrial Area, Gondia, Maharashtra, for the manufacture of "Snuff", which, according to the appellant, falls under Chapter heading 2404 of the Central Excise Tariff. It appears to have lodged a protest before the Assistant Collector, Central Excise, Nagpur regarding the classification of "Snuff" as an end-product for purposes of payment of duty under the Act aforementioned. The Assistant Commissioner rejected the plea raised by the appellant against which the appellant preferred an appeal before

the Commissioner who affirmed the view taken by the Assistant Commissioner. Aggrieved by the said two orders, the appellant preferred an appeal before the CESTAT, for short the Tribunal, in which the appellant succeeded resulting in the classification of "Snuff" under Tariff Heading 2404.60. The Joint Commissioner before whom a refund was claimed, pursuant to the said order of the Tribunal, sanctioned the refund in part. That order was challenged by the Revenue before the Commissioner (Appeals). The appeal against partial refund eventually succeeded and the order made by the Joint Commissioner was set aside. The appellant assailed the said order before CESTAT who affirmed the same by its order dated 19th August, 2004. This order was assailed by the appellant before this Court in an appeal which was dismissed as withdrawn with liberty to the appellants to apply for rectification before the Tribunal. The application for rectification so filed also failed and was dismissed by the Tribunal by its order dated 8th April, 2005. The present appeal was then filed to assail the order passed by the Tribunal dismissing the appeal and upholding the view taken by the Commissioner(Appeals) and rejecting the plea for the grant of refund.

3. On behalf of the respondents, it was submitted that the location of the Tribunal whose order was under challenge in this appeal was wholly immaterial for purposes of determining the appellate forum before whom the appellant should agitate its grievance. It was urged that an appeal u/s 35-G of the Central Excise Act, 1944 can be filed in the High Court as defined u/s 36(b) of the Act. This Court was not, in the light of the said definition, competent to entertain the appeal in the present case. The High Court exercising jurisdiction over the area in which the petitioner's factory was situate in Maharashtra alone could, according to the learned counsel, entertain an appeal u/s 35-G. Reliance in support of that submission was placed upon a Division Bench decision of this Court in *Commissioner of Central Excise v. Technological Institute of Textile*, 1998 (47) DRJ (DB).

4. Mr. Prabhat Kumar, counsel appearing for appellant, on the other hand, relied upon the decision of the Supreme Court in *Kusum Ingots & Alloys Ltd. v. Union of India*, 2004 (168) ELT 3 (SC) in support of his submission that while the citus of Parliament, Legislature of the State or authorities empowered to make subordinate legislation could not itself constitute a cause of action for purposes of conferring jurisdiction upon the Court, the High Courts within whose jurisdiction the authorities passing the orders assailed before them are situate were competent to entertain such petitions.

5. In *Technological Institute of Textile's* case, this court was examining whether citus of the authority from whose order the proceedings have originated under the Central Excise Act, 1944 was relevant for purposes of conferring jurisdiction on this court to entertain an application u/s 35G of the said Act as stood before its amendment. Taking note of the provisions of Section 36(b) which defines the expression "High Court" and relying upon decisions of this court in *SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)*.,

and the decision of the High Court of Madras in Commissioner of Income Tax, Madras (Central), Madras Vs. S. Sivaramakrishna Iyer, and the decision of the Supreme Court in Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., , this court held that the jurisdiction to hear a petition u/s 35-G(3) of the Central Excise Act, 1944 lay with the High Court exercising jurisdiction over the authority from whose order the proceedings had originated and not the High Court of Delhi merely because the main seat of CEGAT was situated at Delhi or the appeal was heard and decided at Delhi. The court observed :

"The ratio of the decision by their Lordships in the case of Stride Well Leather"s (supra) lends support to the view taken by the High Court of Delhi in the cases arising under the Income Tax Act, the Customs Act and the Central Excises Act. We are clearly of the opinion that the jurisdiction to hear the petition u/s 35-G(3) of the Central Excises act, 1944 lies with the High Court having jurisdiction over the authority from whose order the proceedings have originated and not the High court of Delhi merely because the main seat of CEGAT is situated at Delhi and because the appeal was heard and decided at Delhi."

6. The only difference in the legal position that existed at the time the above decision was rendered and the position that prevails today is that instead of the law envisaging a reference from the Tribunal to the High Court, the law now provides for an appeal from every order passed by the Appellate Tribunal. That difference does not however affect the reasoning underlying the view taken by this Court in regard to its jurisdiction to entertain a petition u/s 35G. If a petition seeking reference u/s 35G was not maintainable in this court, there is no reason why an appeal under the said provision after its amendment can be said to be so maintainable. On the reasoning adopted by this court in Technological Institute of Textile"s case (supra), an appeal u/s 35G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of the CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this court.

7. The decision in Kusum Ingots case (supra) relied upon by Mr. Prabhat Kumar does not, in our view, lend any assistance to the appellant. The Supreme Court was in that case examining whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. The appellant in the case before the Supreme Court had challenged the virus of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before this court and the only reason why the petition was according to the appellant maintainable in the High Court at Delhi was that the constitutionality of a parliamentary Act had been assailed in the petition. It was in that background that the Supreme Court held that the citus of

Parliament, the Legislature of the State or authorities empowered to make subordinate legislation would not itself constitute cause of action so as to confer jurisdiction on a court only on that account. The court further observed that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same may not by itself be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience. The provision of the Central Excise Act and in particular the definition of the term "High Court" as available in Section 36(b) of the said Act never fell for consideration of the apex court in Kusum Ingots case (supra). It is Therefore difficult to hold that the view taken by this court in Technological Institute of Textile's case (supra) stands over-ruled sub silentio. Since the decision rendered by this court in the said case directly relates to the provisions of the Central Excise Act under which the present appeal has been filed, we have no option but to follow the said decision and hold that this appeal is not maintainable in this court. The preliminary objection raised by the respondents, Therefore, succeeds. Consequently, this appeal shall stand returned to the appellant for presentation before the proper court. No costs.