(2009) 10 SHI CK 0004

In the High Court Of Himachal Pradesh

Commissioner, Central Excise Commissionerate-I APPELLANT

Vs

Chhabra Tube Products (P) Ltd. and Another RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35E(5)(d), 35G, 35G(1)

Citation : (2010) 252 ELT 63 : (2009) 3 ShimLC 70

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition u/s 35-G(1) of the Central Excise Act, 1944, has been filed against the order dated 25.2.2000, whereby the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), has refused to refer the following question of law for the opinion of this Court:

Whether exemption can be granted under Notification No. 202/88. when the party debits the credit availed on the inputs after the removal of the finished product.

2. The main grounds on which the CEGAT refused to refer the matter was that such a question could not be referred u/s 35-G of the Act. The provisions of the Excise Act as it stood on the relevant date, the statement of case could only be referred for the opinion of the High Court u/s 35-G, which reads as under:

35-G. Statement of case to High Court.?(1) The Collector of Central Excise or the other party may, within sixty days of the date upon which he is served with notice of an order u/s 35-C (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 by application in the prescribed form accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and subject to the other provisions contained in this Section the Appellate Authority shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

3. The Tribunal held that since the matter involves determination of the rate of duty, no reference lies. On behalf of the revenue, it is contended that the question involved is whether the assessee was entitled to take the benefit of the Notification No. 202/88 and this is not a question relating to determination of rate of duty. Hence reference would lie.

4. On the other hand, Mr. Rahul Mahajan has drawn our attention to Section 35E(5) sub-clause (d) of the Central Excise Act, which reads as follows:

(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 of excise 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 for the purposes of assessment of duty includes the determination of a question--

(d) whether any goods fall under a particular heading or sub-heading of the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, as the case may be, granting total or partial exemption from duty; or

5. A bare perusal of the aforesaid provision shows that the phrase determination of a rate of duty has been deemed to include the question whether any goods are covered or not covered by a particular notification issued by the Central Government granting total or partial exemption from duty. The question sought to be referred falls within the ambit of sub-clause (d) of Section 35-E(5). This definition would also have to be read into Section 35-G of the Act and, therefore, reference was not rightly made to this Court. The petition for making reference is accordingly rejected.