(2009) 01 P&H CK 0213

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

Mohan Bottling Co. (P) Ltd. RESPONDENT

Date of Decision : 22-01-2009

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

Citation : (2010) 19 STR 475

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant appeal filed u/s 35G of the Central Excise Act, 1944 (for brevity, "The Act'') is directed against the order dated 28-8-2006. The Full Members Tribunal has answered two questions of law and has further observed that the appeal would, be placed before the concerned Division Benches of the Tribunal for the decision on merits in the light of the answer given to the questions of law.

2. Mr. A.S. Chandhiok, learned Senior Counsel has raised a preliminary objection that u/s 35G of the Act appeals are maintainable only against the orders emerging from the appeal decided by the Tribunal. He has emphasised the use of expression appeal in Section 35G(1) of the Act which reads as under:

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 the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

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3. A perusal of the aforesaid section shows that the appeal is competent before the High Court from every order passed in appeal by the Appellate Tribunal. It is, thus, evident that no appeal would be competent against an order which answers

the question referred to the Full Members Tribunal, especially, when the appeals are yet to be decided by the Division Benches of the Tribunal. We sustain the objection and dismiss the appeal on that ground.