

(2005) 02 MAD CK 0194
In the Madras High Court
Case No : R.C.P. No. 54 of 2002

Commissioner of Central Excise

APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal, South
Zonal Bench at Chennai and Babcock Borsig Power Systems
Ltd.

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35H(1)

Citation : (2006) 202 ELT 758

Hon'ble Judges : Markandey Katju, J;D. Murugesan, J

Bench : Division Bench

Advocate : K. Veeraraghavan, Addl. Central Government Standing, for the
Appellant; S. Muthuvenkataraman, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This is a reference application u/s 35H(1) of the Central Excise Act, by which the following question is sought to be referred to us for our opinion:-

"Whether the Tribunal was right in passing the order on an issue not agitated before it and thereby reopening a matter already settled and not agitated before them?"

2. Heard the learned counsel for the parties.

3. We have carefully perused the judgment of the CEGAT dated 25.2.20 02. In that judgment the CEGAT has recorded a finding of fact in paragraph 6 that there was no suppression of facts by the assessee to invoke the larger period of limitation under the proviso to Section 11A of the Central Excise Act. Mr. K. Veeraraghavan, learned counsel for the department submitted that the Assistant Commissioner as well as the Commissioner (Appeals) have recorded findings that there was suppression.

4. Under the hierarchy of quasi-judicial authorities, in the Central Excise Act, at the lowest is the Assistant Commissioner against whose orders appeals lie u/s 35 of the Central Excise Act to the Commissioner (Appeals) and, thereafter, a second appeal to the CEGAT u/s 35B. It may be noted that the second appeal to the CEGAT is not like a second appeal u/s 100 C.P.C., since it is not confined to questions of law. Second appeals under different statutes can have different meanings and different scope. A second appeal u/s 35B of the Central Excise Act is like a first appeal u/s 96 C.P.C. inasmuch as findings of fact can also be gone into and the CEGAT can re-appreciate or reassess the evidence. Thus the orders of the Assistant Commissioner and the Commissioner (Appeals) merge into the order of the CEGAT by the doctrine of merger, and the only order which now survives is the order of CEGAT. Hence the reference to the orders of the Assistant Commissioner and the Commissioner (Appeals) is wholly misconceived, as these orders no longer survive after the order of the CEGAT. The CEGAT has recorded a clear finding of fact that there is no suppression, and hence, obviously, the demand was time barred since the larger period of limitation under the proviso to Section 11A is not applicable.

5. Mr. K. Veeraraghavan, learned counsel for the department submitted that the Tribunal has granted the relief which was not prayed for and it has traversed beyond the scope of the dispute pending before it because the dispute was only regarding penalty and interest. In our opinion, this argument has no merits because once the Tribunal holds that the demand is barred by limitation in view of Section 11A of the Central Excise Act since there was no suppression, obviously the demand cannot be pressed against the assessee.

6. Thus there is no force in this reference application and it is rejected.