
(2015) 10 GUJ CK 0034
In the Gujarat High Court

Case No : Civil Application (OJ) No. 205 of 2015 in Tax Appeal No. 1388 of 2014

Commissioner of Central Excise, Vapi

APPELLANT

Vs

Parle Agro Pvt. Ltd.

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G, 35G(1), 35H, 36, 36(b)

Citation : (2015) 52 GST 1138 : (2015) 40 STR 1052

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : R.J. Oza, Advocate, for the Appellant; Bharat Raichandani and Harsh N. Parekh, Advocates, for the Respondent

Judgement

Harsha Devani, J.—By this application, the applicant - original respondent has raised an objection touching the jurisdiction of this court to entertain this appeal under Section 35G of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). According to the applicant, the appeal should be filed before the High Court as defined under Section 36(b) of the Act namely, the High Court at Bombay. The fact that the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") which passed the order which is subject matter of appeal is situated in Ahmedabad, according to the applicant, does not confer jurisdiction upon this court to entertain this appeal and determine the issues arising therein. The facts stated briefly are that the respondent-original appellant is a company whose place of business is located at village Sayli, Silvassa within the Union territory of Dadra and Nagar Haveli. The Commissioner of Central Excise and Customs, Vapi issued a show cause notice dated 5th February, 2009 to the respondent - original appellant as to why penalty should not be imposed upon them in relation to the allegations made in the show cause notice. The show cause notice culminated into an Order-in-Original dated 5th March, 2010 passed by the Commissioner, Customs and Central Excise, Vapi Commissionerate disallowing Cenvat credit as stated in the operative part of the order levying interest as well as penalty. The respondent

carried the matter in appeal before the Tribunal at Ahmedabad. By an order dated 28th October, 2014 [, 2015 (37) S.T.R. 385 (Tribunal)] which is subject matter of challenge in the main appeal, the Tribunal dismissed the appeal and upheld the order passed by the adjudicating authority, against which the respondent-appellant has preferred the present appeal which came to be admitted by an order dated 24th December, 2014 on two questions of law as recorded in the said order. Subsequently, the applicant herein, who is the original respondent in the appeal, has filed the present application praying that the tax appeal be dismissed on the ground that it is not maintainable before this court.

2. Mr. R.J. Oza, Senior Advocate, learned senior standing counsel for the applicant submitted that the issue involved in this case is no longer *res Integra*, inasmuch as, this court has consistently held that when the matter arises from any of the Union territories of Dadra and Nagar Haveli and Daman and Diu, in terms of Section 36(b) of the Act, it would be the High Court at Bombay which would have the jurisdiction to entertain and decide the appeal, notwithstanding the fact that the seat of the Tribunal which delivered the order impugned in the appeal may be at Ahmedabad. In support of such submission, the learned counsel placed reliance upon an order dated 4th May, 2015 passed by this court in the case of *Riva Packaging Solutions Private Limited v. Commissioner of Service Tax* rendered in Civil Application (OJ) No. 384/2015, wherein the court accepted the submission advanced by the learned counsel for the respondent therein that as the unit was situated in Silvassa which is a Union territory, the matter which arose from Dadra and Nagar Haveli could only be heard by the Bombay High Court and that the Gujarat High Court has no territorial jurisdiction to hear and decide the matter. Reliance was also placed upon an order dated 9th September, 2015 passed by this court in *Commissioner, Central Excise, Customs and Service Tax, Vapi v. Castrol India Limited* in Tax Appeal No. 93/2012, wherein the Court had observed that the respondent assessee was situated at Silvassa and hence, in view of the provisions of Section 36(b) of the Act, it is the Bombay High Court which would have the jurisdiction to entertain the appeal against the impugned order and not this High Court. Reference was also made to an order dated 16th January, 2013 passed by this court in *Commissioner, Central Excise Customs and Service Tax Department v. Shreeji Aluminium Private Limited* in Tax Appeal No. 413/2012 and allied matters, wherein the Court after noticing the provisions of Section 36(b) of the Act, was of the view that since the respondent therein was situated within the Union territory of Dadra and Nagar Haveli, by virtue of the provisions of Section 36(b)(iii) of the Act, the appeal would be competent before the High Court of Bombay. It was, accordingly, urged that in view of the settled legal position as enunciated in the above decisions, the application deserves to be allowed and the appeal preferred by the respondent is required to be dismissed as being not maintainable before this court.

3. On the other hand, Mr. Bharat Raichandani, learned counsel with Mr. Harsh Parekh, learned advocate for the respondent, strenuously attempted to convince the court to take another view and either hold that the earlier decisions of this

court are per incuriam or to refer the issue to a Larger Bench of this court. The learned counsel submitted that it is the cause of action for the lis that gives necessary territorial jurisdiction to the High Court and that in the present case, the cause of action for the lis clearly arises within the jurisdiction of this High Court. According to the learned counsel, the cause of action is the confirmation of the demand raised against the respondent/original appellant which gives rise to the appeal. In the present case, the entire adjudication proceeding took place in Gujarat and hence, it is this High Court which has the territorial jurisdiction to entertain the appeal. It was submitted that the show cause notice was issued by the Commissioner of Central Excise and Customs, Vapi which Commissionerate falls within the territorial jurisdiction of the High Court. The show cause notice was confirmed by the Commissioner of Central Excise and Customs, Vapi and the appeal against such order came to be decided by the Tribunal at Ahmedabad. Thus, both, the original as well as the final order which is subject matter of challenge in the appeal, have been passed within the territorial jurisdiction of this court.

3.1. Reference was made to the provisions of Section 35G of the Central Excise Act to submit that the High Court therein would mean the High Court in relation to any State, the High Court for that State as defined under Section 36(b)(i) of the Act. According to the learned counsel, the words "in relation to" in the present case would mean in relation to the order passed by the adjudicating authority which is subject matter in dispute and not the unit of the respondent No. 1 at Silvassa since the order in dispute is the order passed by the Commissioner, Vapi and hence, this High Court would be the High Court for the purpose of sub-section (1) of Section 35G of the Act. Reference was made to the decision of the Delhi High Court in the case of Suresh Desai and Associates Vs. Commissioner of Income Tax, , wherein it has been held that questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer. Reliance was also placed upon the decision of the Delhi High Court in the case of Bombay Snuff P. Ltd. Vs. Union of India (UOI) and Others, , wherein the appeal was filed under Section 35G of the Central Excise Act, 1944 and the maintainability of the appeal was challenged on the ground of territorial jurisdiction of the High Court. It was pointed out that the High Court has held that the appeal under Section 35G must be filed only in the High Court which has the jurisdiction over the authority from whose order the proceedings had originated. It was submitted that in the facts of the present case, the proceedings had originated from the order of the Commissioner of Central Excise and Customs at Vapi which falls within the jurisdiction of this High Court and therefore, the appeal has rightly been filed in this court. Reference was also made to the decision of the Supreme Court in the case of Ambica Industries Vs. Commissioner of Central Excise, , wherein the issue before the High Court was as regards the determination of the situs of the High Court in which appeals would lie under Section 35G(1) of the Act. It was pointed out that the Apex Court had upheld the decision of the Delhi

High Court in the case of Suresh Desai and Associates v. CIT (Appeals) (supra) and held that the situs of the Tribunal is not relevant in deciding the jurisdiction of the High Court. The question of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer or the adjudicating authority. It was submitted that testing the facts of the present case on the anvil of the principles enunciated in the above decision, the situs of the adjudicating authority is Vapi, the show cause notice was issued by the Commissioner of Central Excise and Customs, Vapi and the entire proceeding culminating into the order-in-original took place at Vapi within the State of Gujarat, viz., within the territorial jurisdiction of the High Court of Gujarat, and hence, the present appeal is maintainable before this High Court.

3.2. The learned counsel next submitted that assuming without admitting that it is the Bombay High Court which has the jurisdiction to decide the present appeal, the order/direction issued by the Bombay High Court is not binding on appellate authority or adjudicating authority of a different territorial jurisdiction. It was submitted that the Tribunal at Ahmedabad or the adjudicating authority at Vapi is bound to follow the decision or direction issued by the High Court. Therefore, the appeal filed in the present case becomes meaningless if filed before the Bombay High Court as the Tribunal at Ahmedabad or the adjudicating authority at Vapi does not fall within the territorial jurisdiction of the Bombay High Court. It was submitted that, therefore, the application being devoid of merits deserves to be dismissed, inasmuch as, in the light exposition of law in the above decisions, it is this High Court which would have the jurisdiction to entertain the appeal and not the Bombay High Court. It was accordingly urged that the Supreme Court in the above decision having held that it is the seat of the original authority which confers jurisdiction upon the High Court, the decisions of this court, taking a contrary view, are per incuriam.

4. The short question that arises for consideration in this application is as to whether this court has the jurisdiction to entertain and decide the appeal preferred by the respondent against the order passed by the Tribunal in a case where the assessee whose manufacturing unit from which the dispute arises is situated at Silvassa in the Union territory of Dadra and Nagar Haveli, and where the Order-in-Original had been passed by the Commissioner of Central Excise and Customs, Vapi and the appeal against the said order has been decided by the Tribunal at Ahmedabad.

5. Before advertng to the merits of the rival contentions, reference may be made to the provisions of Section 35G to the extent the same are relevant for the present purpose and Clause (b) of Section 36 of the Act which read thus:-

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.

36. Definitions - In this Chapter -

(b) "High Court" means, -

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) in relation to the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay;

(iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India.

Thus, Section 35G of the Act provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal not being an order relating to, 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 purpose of assessment, if the High Court is satisfied that the case involves a substantial question of law. Clause (b) of Section 36 defines "High Court" to mean (i) in relation to any State, the High Court for that State and clause (iii) in relation to Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, the High Court at Bombay. Thus, in relation to Union territory of Dadra and Nagar Haveli, it is the High Court at Bombay which is the High Court as envisaged under Clause (b) of Section 36 of the Act.

6. It is the case of the respondent that since the Commissioner of Customs and Excise, Vapi has issued the show cause notice and has adjudicated the same and he being the adjudicating authority is situated at Vapi within the territorial jurisdiction of this court, it is this court which has the jurisdiction to decide the appeal and not the Bombay High Court. In support of such submission, the learned counsel placed reliance upon the above referred decision of the Delhi High Court in the case of Bombay Snuff Private Limited v. Union of India (supra) and the decision of the Supreme Court in the case of Ambica Industries v. Commissioner of Central Excise (supra) for contending that it is the seat of the adjudicating authority which confers the jurisdiction upon the concerned High Court.

7. It may be significant to note that the Supreme Court in the case of Ambica Industries v. Commissioner of Central Excise (supra), while construing the provisions of Section 35G of the Act, has held that in a case relating to an appeal under Section 35G of the Act, the cause of action doctrine may not be invoked. The court was of the opinion that the determination of the jurisdiction of a High Court on the touchstone of Sections 35G and 35H of the Act, should be considered only on the basis of the statutory provisions and not anything else. In

Bombay Snuffs Private Limited v. Union of India, the Delhi High Court referred to its earlier decision in the case of Commissioner of Central Excise v. Technological Institute of Textile, 1998 (47) DRJ 667, wherein it was held that an appeal under Section 35G must be filed only in the High Court which has jurisdiction over the authority from whose order the proceedings have originated. The court held that the fact that the main seat of the CESTAT was 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 the court. It may be noted that in the case before the Delhi High Court as well as the Supreme Court, the seat of the adjudicating authority and the place where the dispute arose were not different, in other words, the seat of the adjudicating authority and the place where the manufacturing units were located, were both situated within the territorial jurisdiction of the same court. The peculiar situation that arises in the present case is that while all adjudicating authority and all the appellate authorities are situated within the territorial jurisdiction of the State of Gujarat, the manufacturing unit in relation to which the dispute arose is situated in the Union territory of Dadra and Nagar Haveli and by virtue of the provisions of Section 36(b)(iii) , it is the High Court at Bombay which is the High Court in relation to such Union Territory.

8. In the present case, the manufacturing unit of the respondent assessee in relation to which the dispute arises, is situated at Silvassa within the jurisdiction of the central excise authorities who are located at Silvassa namely, the Deputy Commissioner/Assistant Commissioner, Central Excise and Service Tax, Silvassa and the Superintendent, Central Excise and Service Tax at Silvassa. For administrative purposes, the Central Excise authorities who are situated at Silvassa have been conferred jurisdiction to decide cases upto a particular pecuniary limit and beyond such limit such jurisdiction has been conferred on the Commissioner of Central Excise and Customs, Vapi. The present case being beyond the pecuniary limits of the authorities situated at Silvassa, it is the Commissioner of Customs, Vapi, who has exercised jurisdiction and issued the show cause notice and has adjudicated the same. Nonetheless, insofar as the respondent assessee is concerned, it falls within the jurisdiction of the Central excise authorities at Silvassa. In the opinion of this court, the mere fact that the Commissioner of Central Excise and Customs, Vapi also exercises jurisdiction over the Union territory of Dadra and Nagar Haveli would not mean that the matter ceases to relate to the Union territory of Dadra and Nagar Haveli. The dispute/Z/s in the present case emanates from the irregularities committed within the jurisdiction of the Central excise authorities at Silvassa and the matter clearly relates to the Union territory of Dadra and Nagar Haveli. It is only because of the fact that the amount involved exceeds the pecuniary jurisdiction of the central excise authorities situated at Silvassa, that the Commissioner of Central Excise and Customs, Vapi has exercised jurisdiction in the present case. Under the circumstances, since the matter arises in relation to the Union territory of Dadra Nagar and Haveli, under the provisions of Section 35G(1) read with

Section 36(b)(iii) of the Act, it is the High Court at Bombay which would be the High Court having jurisdiction to entertain and decide an appeal against the order passed by the Tribunal. This court, in the decisions on which reliance has been placed by the learned counsel for the applicant, has consistently held that when the manufacturing unit of the assessee is situated within the Union territories of Dadra and Nagar Haveli and Daman and Diu, even if the order which is subject matter of appeal has been passed by the Tribunal at Ahmedabad, appeal would lie to the High Court at Bombay and not to this High Court in view of the provisions of Section 36(b)(iii) read with Section 35G of the Act. For the reasons recorded hereinabove, this court is not in agreement with the contention advanced by the learned counsel for the respondent that the above referred decisions rendered by this court are per incuriam. This court is also of the opinion that no case has been made out for referring the matter to the Larger Bench.

9. A contention has been raised on behalf of the respondent (original appellant) that assuming that the Bombay High Court has jurisdiction to decide the present appeal, the order/direction issued by the Bombay High Court is not binding on the appellate authority/adjudicating authority of different territorial jurisdiction. In the opinion of this court when the Act itself clearly specifies that the jurisdiction to decide appeals in relation to the Union territories of Daman, Diu and Dadra and Nagar Haveli is vested in the High Court at Bombay, it is the said High Court which is the jurisdictional court in relation to matters arising from the said Union territories. Therefore, notwithstanding the fact that the seat of the first appellate authority or the Tribunal may be situated within the territorial jurisdiction of the High Court at Gujarat, in view of the provisions of Section 35G read with Section 36(b)(iii) , it would be the Bombay High Court which would be the jurisdictional High Court in relation to matters arising from the Union territories of Dadra and Nagar Haveli, Daman and Diu and in relation to such matters, it is the order/direction issued by the Bombay High Court which would be binding.

10. Besides, if the contention of the respondent were to be accepted, the provisions of Section 36(b)(iii) of the Act conferring jurisdiction upon the High Court at Bombay to decide appeals in relation to the Union territories of Dadra and Nagar Haveli, Daman and Diu would be rendered more or less nugatory having regard to the fact that in case of matters exceeding a certain pecuniary jurisdiction, the adjudicating authority would be the Commissioner of Central Excise, Vapi. Another anomalous situation that would arise is that in a case where there are two similar proceedings in relation to the same assessee situated within the Union territory of Dadra and Nagar Haveli or Daman and Diu as the case may be, one falling within the jurisdiction of the Assistant Commissioner/Deputy Commissioner at Silvassa and the other falling within the jurisdiction of the Commissioner of Central Excise at Vapi; against the ultimate orders passed in both the appeals which may even be decided by the Tribunal at Ahmedabad by a common order, appeals would lie to the High Court of Gujarat

against the order originating from the order passed by the Commissioner, Central Excise at Vapi and before the High Court at Bombay against the same order to the extent the same decides the lis originating from the order passed by the Assistant Commissioner/Deputy Commissioner at Silvassa. This could never have been the intention of the Legislature. The upshot of the above discussion is that the application succeeds and is accordingly allowed. It is held that it is the High Court at Bombay which has the jurisdiction to entertain the present appeal and not this High Court. The application stands disposed of accordingly.