(2014) 10 AP CK 0137

In the Andhra Pradesh High Court

Case No : C.E.R.C. No. 13 of 2003

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Deccan Granites Ltd. RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 3, 35, 35H(1)

Citation : (2015) 320 ELT 93

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J.

Bench : Division Bench

Advocate : V. Gopala Krishana Gokhale, for the Appellant; Karan Talwar for Lakshmi Kumaran and Sridharan, for the Respondent

Judgement

L.N. Reddy, J.?This Central Excise Reference Case is filed, under Section 35H(1) of the Central Excise Act (for short ''the Act''), as it stood then, with a prayer to require the Central Excise and Gold Control Appellate Tribunal, Bangalore (CEGAT) to refer the following question to this Court:

"For the facts, reasons and grounds as mentioned in the Annexure enclosed, whether Hon''ble CEGAT is not erred in concluding that exemption Notification No. 125/84-C.E., dated 26-5-1984 was available to goods manufactured by a 100% EOU unit, cleared clandestinely and sold in India in contravention of the provisions of law, leading thereby to an absurd situation where clandestine removal without payment of duty is given legal sanction over the clearances made by a 100% EOU unit by following proper procedure namely obtaining approval from Development Commissioner?"

Briefly stated, the facts are that the respondent, a 100% Export Oriented Unit (EOU) in Granite, had permission to sell 5% of its product within the Domestic Tariff Area (DTA). The premises of the factory were inspected, on 7-11-1992. The ground stock of slabs as well as the finished product was verified with reference to RG-I register. A show cause notice was issued by the Original Authority, on 4-5-1993, pointing out that there is shortage of stock of 36,386.42 square feet of slabs of granite and there is excess of 28,658.48 square feet of finished product. It was also alleged that, 33,882.94 square feet of slabs were sold locally. With these allegations, a demand of Rs. 36,05,245/-, was made, as differential Excise duty. The explanation submitted by the respondent was found not satisfactory. The Original Authority passed an order, dated 3-3-1998, confirming the demand.

2. The respondent filed Appeal No. E/1463/1998 before the CEGAT, challenging the original order of demand. The Tribunal allowed the appeal through order, dated 15-11-2002 2003 (151) ELT 582 (Tri.-Bang.). It is in relation to the said order that the reference is sought.

3. Heard Sri V. Gopala Krishna Gokhaley, learned Counsel for the appellant, and Sri Karan Talwar, learned Counsel for the respondent.

4. The respondent is a 100% EOU and has the facility of supplying 5% of its product in DTA. On the basis of the inspection made by him, the Original Authority suspected that the respondent has sold substantial quantity of slabs locally, beyond its entitlement. The plea of the respondent was that the very process of calculation, or verification of the stock, was incorrect. It was pleaded that the gross quantity of the slabs was taken into account, though what is chargeable to Excise duty is a net quantity. Another aspect was, the very competence to levy Excise duty against a 100% EOU, in the absence of specific recovery of any material. The Original Authority did not agree with that and confirmed the demand.

5. In the appeal preferred before it, the CEGAT has undertaken extensive discussion, with reference to each and every aspect. The relevant precedents were taken note of. Firstly, it was observed that the occasion to levy Excise duty, vis-a-vis a 100% EOU would arise, if only any instances of sale of the product in the DTA, are noticed. Admittedly, in the instant case, not a single incidence of sale of the product in the DTA, was pointed out. Just by taking into account the alleged discrepancies between the ground stock and the entries in the register, demand of excise duty was made.

6. Whatever may be the justification to levy Excise duty by invoking power under Section 3 of the Act, vis-a-vis the manufacture, a totally different legal regime exists, when the agency sought to be proceeded is a 100% EOU. What is payable by that unit would be Customs duty. The parameters for levy of Customs duty, on the one hand, and the Excise duty, on the other, are totally different. So much so, the authorities also are not the same. The points, at which the duty leviable is the Excise duty, or the Customs duty, are substantially different.

7. Secondly, the Tribunal recorded a clear finding to the effect that there was serious defect in the very process of verification of the stock. It was mentioned that the gross area of the slabs was taken into account, though what becomes chargeable is a net area. The substantial quantity goes towards wastage and that was not taken into account.

8. Section 35 of the Act, as it stood then, provided for seeking reference, if only there existed any substantial question of law in the process. Though the adjudication undertaken by the High Court happens to be the first by a judicial agency, the one undertaken by the Tribunal cannot be interfered just like that. It is only when substantial question of law raises that an occasion would arise to require the Tribunal to refer the questions to the High Court. We do not find any question of law and the Tribunal itself made it amply clear that the very factual basis on which the demand was made, is incorrect. We, therefore, reject the Central Excise Reference Case.