(1996) 04 RAJ CK 0018

In the Rajasthan High Court

Case No : Excise Reference Application No. 103 of 1988

Hira Cold Storage and Ice Factory — APPELLANT

Vs

Collector of Central Excise and Others — RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G, 35H, 35L

Citation : (1997) 58 ECC 38

Hon'ble Judges : V.K. Singhal, J;M.A.A. Khan, J

Bench : Division Bench

Judgement

1. This application u/s 35G(3) of the Central Excises and Salt Act, 1944 has been made with the prayer to direct the Customs, Excise and Gold (Control) Appellate Tribunal to state a case and refer the questions of law arising out of its orders dated 8.9.1987 and 26.2.1988 to this Court.

2. Arguments of the learned Counsel for the parties have been heard. The appeal No. 858/81-Bl was decided on 8.9.1987. The Collector of Central Excise, Jaipur vide his order dated 6.6.1979 required the petitioner to pay the excise duty on parts of refrigeration and air conditioning machinery installed by M/s. Rajasthan Farm and Food Products, Jaipur in the factory of M/s. Shri Ram Cold Storage. After considering the matter on merits the Tribunal found that there is a judgment of the Gujarat High Court in the case of Anil Ice Factory, reported in 1984(15) ELT 333, in which the Gujarat High has taken a different view than the view taken by the Allahabad High Court in the case of Mother India Refrigeration Industries v. Supdt. Central Excise and Ors., reported in 1980 ELT 600. The decision taken by the Gujarat High Court was relied upon and the appeal was rejected.

3. An application u/s 35G(1) was made which was rejected on the ground that u/s 35G(4) of the Central Excises and Salt Act, 1944 no reference is permitted to the High Court if the dispute is with regard to the classification of the item. It was also observed that u/s 35L the remedy against the order of Tribunal in

relation to the rate of duty is to file appeal before the Supreme Court.

4. Section 35H provides that if on an application made u/s 35G the Appellate Tribunal is of the opinion that on account of conflict in the decisions of the High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court the Appellate Tribunal may draw up a statement of the case and refer it through the President direct to the Supreme Court.

5. In accordance with the provisions of Section 35G if the matter pertains to rate of duty of excise or value of goods for the purpose of assessment, then the remedy lies u/s 35L(b) to file an appeal before the Supreme Court directly. It is only in respect bf the matters other than those orders which have been passed by the Tribunal where the rate of duty of excise or value of goods for the purpose of assessment is not involved, then the application u/s 35G could be made. The Tribunal has rejected the application on the ground that in the present matter the rate of excise duty is involved. Various decisions have been cited before this Court, more particularly, the decisions of Gujarat High Court and Allahabad High Court taking contrary view on the point whether the assessee is liable to the excise duty at all or not. There is a distinction between a case where the total liability is denied and where the rate of duty of excise duty is disputed. Since the question of exemption or denial of total liability is not excluded by the provisions of Section 35G(1), therefore the Tribunal should have heard and disposed of the application on merits.

6. It is evident from the decisions which have been produced before this Court that there is a divergence of opinion amongst the High Courts. In such a situation the proper course for the Tribunal was to draw up a statement of the case and refer it to the Supreme Court directly instead of observing that the petitioner has remedy u/s 35L. Instead of making any directions u/s 35G(3) we direct the Tribunal to draw up a statement of the case and refer the same to the Supreme Court within a period of 90 days from the submission of a certified copy of this order before it.

7. The reference application stands disposed of accordingly.

