
(2014) 11 GAU CK 0007
In the Gauhati High Court
Case No : C. Ex. App. No. 3 of 2008

New Tobacco Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A 35G

Citation : (2015) 323 ELT 734

Hon'ble Judges : K. Sreedhar Rao, Acting C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : R. Srivastava, G. Choudhury, P. Borah and K.M. Saikia, Advocate for the Appellant; B. Sarma, S.C., Advocate for the Respondent;

Judgement

1. The Government of India in Ministry of Industries declared an industrial policy granting certain concessions to the north-eastern region of India. By the said notification exemptions were granted in respect of goods specified in the 1st Schedule and 2nd Schedule to the Central Excise Tariff Act, 1985. Cigarette was one of the goods that was entitled to the benefit of exemptions. The appellant (New Tobacco Company) who enjoyed the benefits claimed refund of an amount of Rs. 1,89,45,120/-. The claim was rejected and show cause notice was issued for payment of excise duty for the month of July and August, 2000. The show cause notice was challenged in W.P. (C) 446/2001. The learned single Judge passed an interim order directing the refund and also directed the appellant (herein) to pay the excise duty from the month of July, 2000 onwards. Despite the interim order of this Court refund was not granted. The writ petition finally came to be allowed. The show cause notice was quashed and the interim order of refund was confirmed. A writ appeal filed by the department also came to be dismissed.

2. The Central Government brought about an amendment to Section 154 of the Finance Act, 2003 whereby the exemptions came to be withdrawn retrospectively. The Supreme Court in R.C. Tobacco Pvt. Ltd. and Another etc.

Vs. Union of India (UOI) and Others, upheld the constitutional validity of Section 154 (withdrawing the concessions retrospectively). The Commissioner of Central Excise (CCE), in view of the decision of the Supreme Court, revived the earlier notice (issued) and passed the final order of adjudication directing payment of excise duty from July, 2000 onwards till then with interest at the rate of 24 percent. The appellant aggrieved by the said order filed an appeal before the Customs, Excise and Services Tax Appellate Tribunal. An application for stay of the order of the CCE was also filed. The Tribunal while hearing on the stay application passed orders on merits on the main matter and dismissed the appeal in view of the judgment of the Supreme Court in R.C. Tobacco (supra) case holding that the order "of withdrawal of concessions retrospectively" by virtue of Section 154 is valid and therefore the appellant has no right to challenge the order of the CCE. Against the said order an appeal was also filed before this Court. This Court confirmed the order of the Tribunal. The appellant filed an appeal before the Supreme Court - Civil Appeal 2011/2014 [2014 (310) E.L.T. A85 (S.C.)]. The Supreme Court passed the following order.

"The order of the High Court under challenge dealt with the appeal preferred by the assessee-appellant under Section 35G of the Central Excise Act, 1944 filed against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in Appeal No. 89 of 2008. The appeal was admitted for consideration on the following substantial questions of law :

(i) Whether the CESTAT was correct in disposing of the appeal filed by the appellant after only giving them an opportunity of arguments on the stay application?

(ii) Whether the Courts below have correctly appreciated the fact that Section 11A of the Central Excise Act, 1944 prescribed for issuance of a show cause notice and limitation thereunder for demand of duty in the facts of the present case while confirming the demand of duty and interest thereon?

(iii) Whether the Hon"ble CESTAT has appreciated the fact that if the recovery was to be made simplicitor under Section 154(4) of the Finance Act, 2003 as a result of withdrawal of exemption retrospectively then whether the machinery provided of the special procedure and independent mechanism provided for the recovery and the interest chargeable had been duly followed by the department while confirming the demand?

(iv) Whether the Hon"ble CESTAT was correct in confirming interest on the duty amount in the light of the amended provisions of Section 11AB when confirming interest on duty and refund amount for the period prior to 2001?

(v) Whether the CESTAT failed to appreciate that the Commissioner of Central Excise, Shillong by passing an ex parte order without giving an opportunity of personal hearing to the appellant had violated the principles of natural justice as the same had taken away the right of the appellant to represent their case and file material and submissions in support of their case."

We notice that the High Court did not answer the questions of law. The High Court, however, referred to a judgment of this Court in R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, wherein this Court upheld the constitutional validity of Section 154 and Schedule IX of the Finance Act. We find substance in the submission of learned counsel for the appellant that the questions which the High Court had to answer were not really dependent on the upholding of the constitutional validity of Section 154 and the High Court ought to have answered those questions.

3. The substantial questions of law referred to by the Supreme Court are the one framed by this Court.

4. It is the contention of the appellant (herein) that the Tribunal in the first instance did not deal with the questions that arose in the appeal: and upon the decision of the Tribunal, on merits the substantial questions of law have to be framed. The Tribunal hastily disposed of the appeal while hearing on the stay application. Therefore, the Tribunal did not consider all the relevant facts and the law applicable to the facts in deciding the appeal. It is therefore submitted that it is just and proper that the matter be remanded to the Tribunal for fresh consideration and disposal on merit by giving an opportunity to both the parties and depending upon the result of the order of the Tribunal the next course of action has to be taken by the parties. In that view of the matter it is submitted that the order of the Tribunal is to be set aside and the matter is to be remanded for fresh consideration.

5. Sri Dubey, the counsel for the department, submits that the substantial questions of law are pure questions of facts, therefore this Court can consider the same without remand and dispose the appeal on merits.

6. Upon thorough consideration of the submission and the facts it appears that the present proceedings is an appeal. The substantial questions of law have to be framed depending upon the decision of the Tribunal, on merits. It is not a writ proceedings where this Court can exercise its jurisdiction - irrespective of the technicalities - to go into the questions and to decide without the need for remand. The Tribunal should apply its mind and decide the appeal with reference to the material facts and the law applicable and thereafter the further question would arise. In this case, since the Tribunal did not dispose of the appeal on merits it is just and proper that the matter be remanded to the Tribunal for fresh consideration. Accordingly the appeal is partly allowed. The matter is remanded to the Tribunal for consideration in accordance with law.