(2005) 03 MP CK 0057

In the Madhya Pradesh High Court

Case No : M.C.C. No. 136 of 2000

Union of India (UOI) APPELLANT

Vs

Bajaj Tempo Limited RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35(H)(1), 35(H)(2), 35(H)(4)

Citation : (2005) 127 ECR 156 : (2005) 187 ELT 294

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : Vinay Zelawat, for the Appellant; S.N. Kohli, Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—By this application made by Union of India through Commissioner of Central Excise and Customs, u/s 35H(1) of Central Excise Act, 1944, consequent upon the decision rendered by CEGAT in appeal filed by the respondent being Appeal No. E/2164/99-Mum., which in turn arises out of Order-in-Original No. 15-Comr/C/Ex/Ind/99, dated 19-3-1999 decided by Commissioner of Central Excise. It is the case of applicant i.e. Commissioner, Central Excise that following question of law arises out of the aforesaid appellate order :-

"Whether CEGAT can override the statutory Rules and Order allowance of Modvat credit, when utilisation of accumulated Modvat credit on account of one Vehicle for clearance of another Vehicle for which some of the inputs are not common inputs and inputs were clearly distinguishable i.e. which are exclusively used for manufacture of Matador under Chapter Heading 8704.00 and similarly for manufacture of Tempo Travellers under Chapter Heading 8702.00 ?"

2. It is, therefore, the case of the applicant that CEGAT be asked to refer the said question or any other question alike the one proposed to this Court for being

answered as contemplated under the Scheme of the Act on merits.

3. Heard Shri Vinay Zelawat, learned Counsel for the applicant and Shri S.N. Kohli, learned Counsel for the non-applicant.

4. Having heard learned Counsel for the parties and having perused record of the case, we are of the view that question proposed by the applicant i.e. Commissioner, Central Excise does arise out of the appellate order, referred supra and secondly, it being a referable question of law requiring interpretation of two tariff entries, the same deserves to be allowed by directing the Tribunal (CEGAT) to call for the question, referred supra.

5. It is not necessary for us to burden the order by taking note of entire facts in detail because it is now for the Tribunal to detail the facts. Suffice it to say that mere perusal of aforequoted question proposed together with impugned order would show that the question that may arise for consideration is as to how and in what manner the assessee is entitled to claim Modvat on certain common input used by them in manufacture of two different types of vehicles falling in two different tariff entries.

6. Such question cannot be said to be question of fact but it is a question of law. It needs to be examined by the High Court. In our opinion, therefore, we are satisfied that the question of law proposed by the applicant is a question of law as contemplated u/s 35H Sub-section (2) read with Sub-section (4) of the Central Excise Act, 1944 and hence, the same needs to be answered by this Court in exercise of our powers conferred under the law. We are not satisfied with the submission made by the learned Counsel for the assessee when he contended that it is a question of fact.

7. Accordingly and in view of aforesaid discussion, the application is allowed. The Appellate Tribunal is hereby directed to refer the aforementioned question of law raised by the applicant in the application to this Court as contemplated under Sub-section (4) of Section 35H by drawing up the statement of the case and refer it to the High Court.

No costs.

