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(2005) 04 MP CK 0029

In the Madhya Pradesh High Court

Case No : M.C.C. No. 312 of 2000

Union of India (UOI) APPELLANT

Vs

Kinetic Honda Motors Ltd. RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35H

Citation : (2005) 187 ELT 19

Hon'ble Judges : S.K. Seth, J;A.M. Sapre, J

Bench : Division Bench

Advocate : V. Zelawat, for the Appellant; M.P. Devnath and S. Kohli, for the Respondent

Judgement

A.M. Sapre, J.—This is an application made by the Commissioner of Central Excise and Customs (Revenue) u/s 35H of the Central Excise Act, 1944 praying for a direction to the Tribunal (CEGAT) to refer the questions of law to this Court which according to them are said to arise out of the appellate order dated 16-12-1999 No. A/1177-80/99-NB(DB) passed in E/A-724-727/99-NB.

2. Heard Shri V. Zelawat, L/C for petitioners and Shri M.P. Devnath with Shri Sanjeev Kohli for respondents.

3. Having heard learned counsel for the parties and having perused the record of the case we are of the considered opinion that this application deserves to be allowed. In other words we are satisfied that questions of law proposed by the applicants does arise out of the impugned appellate order referred supra and hence being referable questions the same deserves to be referred to this court for answer on merits.

4. It is really not necessary for this court to narrate the facts in detail and burden our order because it is now for the Tribunal to detail the facts in the statement of case to be drawn to this court while referring the questions referred by this court infra. Suffice it to say the question arose before the Excise Authorities and which

eventually came to be decided by the Tribunal by passing the impugned appellate order as to whether Assessee (respondents herein) are entitled to utilize the credit earned on inputs used in manufacture of mopeds on payment of Central Excise Duty on scooters in which such inputs were not used, whether the impugned demand raised on the Assessee for Rs. 2,57,64,971.40 paisa is barred by limitation and lastly whether any case for penalty is made out?

5. It is these questions which were eventually decided by the Tribunal in favour of Assessee giving rise to filing of this application by the Revenue and praying for adjudication of the aforesaid three questions on merits with a view to find out whether finding recorded by the Tribunal is legal or not?

6. In our considered opinion none of the aforesaid three questions can be said to be the questions of facts but they are questions of law. We are also of the view that they do arise out of the impugned appellate order and being referable one has to be examined by this court in our reference jurisdiction.

7. Learned counsel for the respondent (Assessee) with vehemence contended that none of the questions proposed are questions of law but essentially questions of fact and stands decided by several decisions. Learned counsel placed reliance on Shri K. Ravindranathan Nair Vs. Commissioner of Income Tax, Ernakulam, - Ratlam Wires Pvt. Ltd. Vs. C.E.S.T.A.T., - M/s. Hanumant Cement Pvt Ltd. Vs. Union of India, - Hanumant Cement P. Ltd. v. Union of India; 2002 (146) E.L.T. 316 MP; Order dated 7-1-2004 of Delhi High Court in CEAC 2/2002 in Design Auto Systems Ltd. Vs. Commissioner of C. Ex. and Cus., in Design Auto Systems Ltd. v. CE & CMS. Indore; 2004 (175) E.L.T. 79 (P & H) - HB Fibres Ltd. v. CEGAT; 2005 (181) E.L.T. 15 (P & H) in Commissioner of C. Ex. Vs. Jagatsons Industries, - Associated Switch Gear Pvt. Ltd. Vs. CCE, - Commissioner of C. Ex. Vs. Bharat Heavy Electricals Ltd., - CCE, Bhopal v. BHEL, and contended that no useful purpose would be served in calling the reference on the questions proposed. We do not agree to his submissions. In our opinion firstly, the questions proposed are based on peculiar facts of this case and secondly they are not concluded by any decision of the Supreme Court. This Court will deal with the cases relied on at the time of answering the questions on merits because at this stage we are not able to notice any case which may conclude the controversy in favour of Assessee.

8. In view of aforesaid discussions we allow the application and direct the Tribunal to refer to this Court following questions along with the statement of case -

(i) Whether in the facts and circumstances of the case Tribunal was justified in holding that Assessee is entitled to utilize credit earned on inputs used in the manufacture of Mopeds on payment of Central Excise Duty on scooters in which such inputs were not used?

(ii) Whether in the facts and circumstances of the case the Tribunal was justified in holding that demand in question is barred by limitation?

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(iii) Whether in the facts and circumstances of the case, Tribunal is justified in holding that no case for penalty is made out?

9. Let the statement of case be sent by the Tribunal to this Court within three months along with all detailed facts and necessary annexures to enable this Court to answer the questions framed supra.

No cost.

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