(2005) 04 MP CK 0034

In the Madhya Pradesh High Court

Case No : M.C.C. No. 352 of 2000

Union of India (UOI) APPELLANT

Vs

Nicholas Piramal India Ltd. RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 57Q
Central Excises and Salt Act, 1944 — Section 35H(1)

Citation : (2005) 186 ELT 407

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

Bench : Division Bench

Advocate : V. Zelawat, CGSC, for the Appellant; N.K. Dave, for the Respondent

Judgement

A.M. Sapre, J.—This is an application made u/s 35H(1) of the Central Excise Act, 1944 by the Commissioner Central Excise and Customs, seeking for direction to call for the substantial question of law for being answered by this court. A prayer is thus made to direct the Tribunal to send for the question of law which according to applicant does arise out of the impugned appellate order of the CEGAT passed on 21-12-1999 bearing No. A/1434/99-NB/SM/ in Appeal No. E/595/99-NB(S) [2000 (118) E.L.T. 408 (Tribunal)]. So the short question that arises for consideration in this application is whether any case is made out for calling the question of law by giving direction to the Tribunal i.e. CEGAT to draw a statement of case and refer the question proposed by the applicant or any other question arising out of the impugned appellate order?

2. Heard Shri V. Zelawat, learned Standing Counsel for Union of India and Shri N.K. Dave, L/C for the respondents.

3. The question that really arises for consideration in this application and which was subject matter before the departmental authorities is whether the assessee is entitled to claim Modvat credit under Rule 57Q on goods called or known as Spectrophotometer and Teflon Spacer. In other words the question that arises for consideration is whether authorities below were justified in holding or/and

granting Modvat credit on the goods called "Spectrophotometer and Teflon Spacer". It is essentially this question which was debated inter se parties giving rise to making of this application by the Revenue because the question was answered against the Revenue and in favour of Assessee (Respondent).

4. Both L/s for parties brought to our notice decisions of Tribunal on the issue such as 1997 (70) ECR 539 , 1998 (61) ECC 676 , 1997 (71) ECR 1 05 , and lastly of Supreme Court reported in Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, .

5. We have gone through the decisions which were cited at bar and we have formed an opinion that the questions involved in this case does arise out of the order of Tribunal and being a referable question of law deserves to be called from the Tribunal to this Court for being answered. It is not a question which can be regarded as fully covered by any decision of the Supreme Court or jurisdictional High Court (M.P.). It is a question which need to be probed on the issue of law and hence we allow the application and direct the Tribunal (CEGAT) to refer the following question of law to this Court for answer in exercise of powers so conferred on them by drawing the statement of case :-

"Whether Assessee is entitled to claim Modvat credit under Rule 57Q on the goods called or known as ''Spectrophotometer and Teflon Spacer''?"

6. Let the statement of case be drawn by referring the aforesaid question by the Tribunal out of the order referred supra within three months as an outer limit.

No costs.

