(2006) 01 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 217 of 2001

Union of India (UOI) APPELLANT

Vs

Precitex Rubber Components (P) Ltd. RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

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

Citation : (2006) 197 ELT 173

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

Bench : Division Bench

Advocate : V.K. Zelawat, ASGI, for the Appellant; B.M. Masani, for the Respondent

Judgement

1. The decision rendered in this petition shall dispose of other connected M.C.C. bearing No. 133/97 because both these MCCs involve common question of law and secondly they are between the same parties.

2. This is an application made by the Commissioner, Central Excise & Customs, Indore u/s 35H(1) of the Central Excise Act, 1944, which arises out of an order dated 6.11.96, passed in Appeal No. E/5104/92-NB (SM) bearing Order No. R/2645/96-NB seeking calling for a question from the Tribunal for being answered by this Court in reference jurisdiction. Before coming to this Court, the applicant i.e., Commissioner, Central Excise had also requested the Tribunal to make a reference to this Court on the question proposed, but by order dated 24.11.2000 bearing No. A/244/00/NB (SM), in Reference case No. E/Ref./54/97-NB (SM), the Tribunal declined to make a reference. It is under these circumstances, this application has been submitted by the Commissioner of Central Excise & Customs, Indore.

3. The following question of law is proposed by the Commissioner for answer by this Court in our reference jurisdiction if called. The question proposed reads as under:

Whether BOPP Film used as a separator in vulcanizing process of manufacturing aprons and cots can be regarded as an input for the purpose of Rule 57A of Central Excise Rules?

4. Heard Shri V.K. Zelawat, Assistant Solicitor General of India for the applicant and Shri B.M. Masani, learned Counsel for the no-applicant No. 1. However, none appeared for the NA. 2.

5. Having heard the learned Counsel for the parties and having perused the record of the case and having examined the controversy on the basis of record produced before us we are satisfied that the question of law proposed does arise out of the impugned appellate order referred (supra) and, therefore, the same deserves to be referred to this Court for answering the same on merits by this Court in our reference jurisdiction. Since we are satisfied about the question of law proposed which in our opinion does arise out of the controversy, we do not wish to burden our order by narrating the entire facts in detail.

6. It is now for the Tribunal to send the statements of case to this Court on facts relevant for disposal of reference and to enable this Court to answer the question framed on the facts found and finding recorded by the appellate authority.

7. In view of the aforesaid limited discussion which alone in our opinion is necessary, the application deserves to be and is hereby allowed. The Tribunal is accordingly directed to send the statement of cases by sending reference to this Court on the question of law framed supra preferably within a period of six months from the date of receipt of the order. Needless to observe the statement of case shall consist of detail facts necessary for the purpose of answering the question framed along with all the necessary orders passed by the authorities and relevant documents referred to in the orders. No costs.