
(2005) 08 MP CK 0051
In the Madhya Pradesh High Court
Case No : MCC No. 439 of 2000

Union of India (UOI)

APPELLANT

Vs

Siddharth Tubes Ltd.

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G , 35H(1)

Citation : (2006) 194 ELT 144

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application made by the Commissioner of Central Excise and Customs, Indore, u/s 35H(1) of the Central Excise Act, 1944 praying this court to call for a reference to be answered by this court arising out of an order passed by the Tribunal on 16-3-2000 in Appeal No. E/1183/97-A along with another Appeal No. E/Misc./512/99-A (Ann. P/10 to the Paper-book) bearing Final Order No. 152/2000-A & Misc. Order No. 36/2000-A. The Tribunal partly allowed the appeal filed by the assessee and partly rejected it.

2. It is against that part of the appeal which was decided against the Revenue and in favour of assessee, the Revenue has filed this reference application calling for the questions proposed for answer by this Court. One of the question that arose before the Tribunal was "whether the fitting of the rubber/plastic ring could be included in the assessable value of the pipes and tubes manufactured by the assessee ?" This issue was answered against the Revenue and in favour of the assessee by the Tribunal by recording the following finding :

Cost of Rubber/Plastic Rings -

The end of the pipe at which the socket was not fitted was covered by a rubber or plastic ring to protect the threading during transportation, handling and storage. According to the show cause notice, this fitting was in the nature of

packing.

As the fitting of the rubber/plastic ring was only for sale transportation, we consider that the cost of such rubber/plastic ring was not includible in the assessable value of the pipes and tubes.

3. Another question which came up for consideration before the Tribunal and which was decided in favour of Assessee was in respect of inspection charges viz. "whether such charges could be includible in the assessable value of the pipes and tubes ?" As stated supra, this was also answered against the Revenue and in favour of the assessee. All other issues to which we are not concerned were answered against the assessee and in favour of Revenue. However, those questions are not before this court because the assessee has not come up in reference praying this court to call for a reference to be answered by this Court.

4. So far as the issue in relation to inspection charges is concerned, the Tribunal recorded the following finding :

Inspection Charges -

As regards the inspection charges, we consider that the matter is covered in favour of the appellants by the Tribunal's decision in the case of 1992 (42) ECR 1 10 which has been confirmed by the Supreme Court as reported in the Court Room Highlighted at Page A-51 in 1992 (62) E.L.T. 51 SC The Tribunal had held that the additional testing/inspection charges for the tests/inspections conducted by the Directorate General of Supplies and Disposals at the request of the specific customers were not includible in the assessable value when cost of such additional testing/inspecting was being borne by the customers. The Supreme Court dismissed the Civil Appeal No. 2465 of 1992 filed by the CCE against the aforesaid Tribunal's decision as reported in the Court Room Highlights at page A-51 in 1992 (62) E.L.T.

Thus, we hold that the cost of galvanisation and that of the sockets and the service charges were includible in the value of the pipes and tubes, while the cost of rubber/plastic rings and the inspection charges were not includible in the assessable value of the pipes and tubes.

5. It is against these two findings viz. finding on cost of rubber/plastic rings and additional inspection charges, that the Revenue has come up in application u/s 35G of the Act requesting this court to call for a reference.

6. Having heard learned counsel for the petitioner and having perused the record of the case we do not find any ground much less good ground to call for the reference on the two findings recorded by the Tribunal against the Revenue and in favour of the assessee. Indeed mere perusal of the findings so recorded by the Tribunal in an appeal filed by the assessee are self-explanatory in nature and based on the findings of fact given in this case. They, in our opinion, do not involve any substantial question of law requiring answer by this Court.

7. Submission of learned Counsel, for petitioner was based on the Supreme Court decision rendered in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, . Placing reliance on para 13 of the said decision, learned counsel contended that a question of law arises on these two findings and, therefore, this court should call a reference and answer it. We are afraid we cannot accept this submission. The facts involved in the case that was before the Supreme Court in Madras Rubber Factory Ltd. 's case supra was in relation to a finding of fact recorded therein. Such finding of fact or factual case does not find place so far as the present case is concerned. In order to attract the rigor of taxation, it is necessary to have first a factual finding recorded by the authorities concerned in favour of Revenue. It is only then the question arises about its applicability to a particular fact. Since no such factual finding was recorded in this case like the finding recorded in the case before the Supreme Court in the case of Madras Rubber Factory Ltd, supra and hence, the law explained in paragraph 13 will not apply so far as facts of this case is concerned.

8. We, therefore, find no ground much less a ground to interfere in the order passed calling reference on the question proposed. So far as the other two question are concerned, the Tribunal has reduced the penalty from Rs. 10,00,000/- to Rs. 7,50,000/- and, therefore we cannot find any fault in those observations. Same is the case with regard to grant of interest. In sum and substance we are unable to find ourselves to answer any of the points urged by the petitioner in this petition and, therefore, we are not inclined to call a reference on the questions proposed.

9. The application, therefore, fails and is hereby dismissed.