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Commissioner of Central Excise Vs. Amrish Electricals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1999

Reported in : (1999)(65)ECC751

Appellant : Commissioner of Central Excise

Respondent : Amrish Electricals

Judgement :

1. At the outset, the learned Counsel for the respondents Shri Bipin Garg raised a preliminary objection to the maintainability of the Reference Application on the ground that it does not arise out of the final order passed in terms of Section 35C, against which alone a Reference application can be filed in terms of Section 35G, but it arises out of a order passed in terms of second proviso to Section 35B and the Tribunal has declined to admit the appeal for the reasons recorded in its order.

2. The learned DR, Shri Nunthuk submits that the question of law namely as to whether the Gate passes issued prior to 1-4-1994 but endorsed subsequently before 30-6-1994, has already been referred to the Hon'ble Bombay High Court by the Western Zonal Bench in the case of Moosa Hazi Patrawala and therefore, the question of law framed in this application, requires to be referred to the jurisdictional High Court.

3. I have carefully considered the rival submissions and see substantial force in the submission of the learned Counsel that the order of the Tribunal out of which the Reference Application arises is not an order passed in terms of Section 35C of

the Central Excise Act but an order passed in terms of second proviso to Section 35B which provides that "the Tribunal has discretion to refuse to admit an appeal in respect of an order passed by the Commissioner (Appeals) under Section 35A or an order passed by the CBEC... or an order passed by the Board or the Commissioner of Central Excise... in any disputed case where the difference in duty involved or the duty or the amount of fine or the penalty determined by such order does not exceed Rs. 50,000/-." Since the Tribunal's final order is not an order passed under Section 35C, Reference application is not maintainable since an application for reference can be filed under the provisions of Section 35G only against an order passed under Section 35C (not being an order relating among other things to the determination of any question having relation to the rate of duty of excise or the value of goods for purposes of assessment). I, therefore, uphold the objection of the respondents and reject the Reference Application as not maintainable.

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