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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-20-2000

Judge : S P Judicial

Appellant : Commissioner of Central Excise,

Respondent : Haryana Sheet Glass

Judgement :

1. The Revenue has filed the present application for making reference of a question of law arising out of Final Order passed by the CEGAT on 14.7.99. But the ld. Counsel of the respondents has submited that the reference application itself is not maintainable in view of the insertion of Section 35 H in the Central Excise Act, 1944 vide Finance Act, 1999 as under that Section reference application has to be directly made by the Revenue to the High Court.

2. I have gone through the provisions of Section 35 H of the Central Excise Act which enacts that the reference application has to be made to the High Court against the order of the CEGAT passed on or after first day of July, 1999. The language of this Section is quite clear and unambiguous and leaves no doubt in one's mind that reference application has to be made by the Revenue before the High Court directly against any order passed by the Tribunal on or after the first day of July, 1999.

3. Admittedly, the Final order in the instant case was passed by the Tribunal on 14.7.99. Therefore the present reference application, in view of the Section 35 H of

the Act referred to above, is not maintainable before the Tribunal. The Revenue has to approach the High Court directly. In this view, I am also fortified by the ratio of the law laid down by the Tribunal in Commissioner of Central Excise Pune vs. Jai Corporation Ltd. [2000 (41) RLT 497] wherein a similar view had been taken and the reference application of the Revenue was dismissed in view of the provisions of Section 35 H of the Act.

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