

5 S Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1988

Reported in : (1989)(44)ELT649TriDel

Appellant : 5 S Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. By this application purporting to be under Section 35G(1) of Central Excises & Salt Act, 1944 hereinafter (Act) the appellant-applicant prays that the statement of the case be drawn up and the following questions of law be referred to the High Court having jurisdiction in the matter.

1. Whether after the issue of Exemption notification under Section 11C of the Central Excises & Salt Act, 1944 the appeal could be dismissed for non-compliance of Section 35F of the Central Excises & Salt Act, 1944? 2. Whether after the issue of Exemption Notification under Section 11C of the Central Excises & Salt Act, 1944, the respondents could insist the compliance of Section 35F of the Central Excises & Salt Act, 1944? 2. At the hearing, it was pointed out to Shri I.C. Upadhyay, Advocate for the applicants that Section 35G(1) is excluded in its application to an order relating among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment and whether the present appeal was not hit by this exclusion. Shri Upadhyay submitted that while the appeal on merits did squarely relate to determination of a question having relation to a rate of duty of excise, the

Order No.664/87-C dated 8-9-1987 in respect of which the present application was made did not relate to determination of any such question. He submitted that the present application would be maintainable in respect of the order inspite of the exclusion referred to in Section 35G(1) of the Act.

3. Questioned by the Bench, Shri Upadhyay stated that he could not cite any High Court or Supreme Court precedent in support of his submissions that such an order should be read in isolation divorced from the points involved in the appeal.

4. Shri L.C. Chakraborti, Departmental Representative, relying on Tribunal decision in Union Carbide India Ltd. v. Collector of Customs, Calcutta [1984 (18) ELT 449] submitted that the present application was clearly not maintainable.

5. Section 35G(1) of the Act is clearly excluded in its application to an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment. It is true that the present order rejecting the appeal was passed for failure of the applicants to comply with Section 35F of Central Excises & Salt Act, 1944 relating to pre-deposit of duty demanded or comply with the stay order passed by the Tribunal. Assuming, however, that this bar had not operated against the applicant, the Tribunal would necessarily have been required to determine question as to the rate of duty of excise.

That the appeal involved determination of question as to rate of duty is not disputed even by Shri Upadhyay Advocate for the applicant. The words "having a relation" are of wide import. The order in respect of which the present application is made cannot be read in isolation divorced from the questions involved in the main appeal. Our this view finds support from the Tribunal decision in Union Carbide India Ltd. (supra) on which Shri Chakraborti has placed reliance. We, therefore, find the present application not maintainable and reject the same.

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