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Associated Switch Gear Pvt. Ltd. Vs. Cce

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Court : Allahabad

Decided On : Apr-12-2004

Reported in : 2004(95)ECC486; 2004(174)ELT151(All)

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : Central Excise Act - Sections 11A, 35G and 35G(1); Income Tax Act - Sections 256(1)

Appeal No. : CE Reference Application No. 21 of 2003

Appellant : Associated Switch Gear Pvt. Ltd.

Respondent : Cce

Advocate for Def. : B.N. Singh, SSC

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Disposition : Application rejected

Judgement :
ORDER

M. Katju, J.

1. This reference application under Section 35G(1) of the Central Excise Act seeks to raise as many as nine question for reference to this Court. These questions are

mentioned in the application and hence need not be repeated.

2. We have heard the learned counsel for the parties and have carefully perused the order of the CEGAT dated 25.10.2002.

3. The assessee is a unit engaged in the manufacture and/or sale of electrical distribution control panels. The assessee entered into contracts with certain parties for design, fabrication, erection and commissioning of such control panels at the premises of these parties.

4. The assessee alleged that it does not manufacture all the parts required for the manufacture of the electrical panels. Some of the parts were allegedly bought from other manufacturers.

5. The Central Excise Authorities examined a consignment when it was in transit from the assessee's factory on 5.2.1988. This examination revealed that the assessee had actually manufactured the entire control panels in its factory and removed the same from the factory, while the excise duty documents (GP-I) were issued and duty paid only on a small part of the value of the goods, as the assessee had claimed that only goods manufactured in its factory was liable to duty and the remaining goods were purchased from the market. This discovery led to further investigation and ultimately a show cause notice was issued alleging that the assessee had manufactured LT panels in the factory in regard to seven contracts and in those cases the assessee had evaded central excise duty by claiming that only a small part of the goods had actually been manufactured in its factory. After hearing the assessee the impugned order was passed which has been confirmed in appeal and differential duty alongwith fine and penalty has been imposed on the assessee.

6. A perusal of the impugned order of the CEGAT dated 25.10.2002 shows that the controversy before the Tribunal was whether the assessee had been actually manufacturing the full equipment in its factory and not merely the panel frames as declared in the duty paying documents. After considering the entire evidence in great detail the Commissioner as well as the Tribunal have held that the appellant has been actually manufacturing the full equipment in its factory and not merely

the panel frames. It was held that the assessee had actually suppressed the actual state of affairs regarding what it manufactured in the factory and the real value of such equipment from the central excise authorities by preparing two sets of documents showing false value of the items covered by them. The duty was paid only in respect of the value of 'panel frames' which constituted only a small portion of the value of the goods actually manufactured and cleared by the assessee. Thus deliberate fraud was committed by the assessee on the Central Excise Authorities, resulting in short levy of excise duty.

7. The findings recorded by the Tribunal are findings of fact and we cannot interfere with them in this reference.

8. No doubt learned counsel for the assessee has also sought to raise some additional points but it appears that they were not raised before the CEGAT, as a perusal of the order of the CEGAT discloses. Hence, in our opinion they do not arise out of the order of the Tribunal.

9. It may be mentioned that Section 35G of the Central Excise Act states that the High Court can direct a reference on 'any question of law arising out of' the order of the CEGAT. In our opinion unless a question is raised before the Tribunal it cannot be said that this question arise out of the order of the Tribunal.

10. It may be pointed out that Section 35G(1) is analogous to Section 256(1) of the Income Tax Act where also the expression 'arising out of the order of the Tribunal' has been used. There is a catena of decisions on the interpretation of Section 256(1) which in our opinion would also apply to the interpretation of Section 35G of the Central Excise Act because the provisions are analogous. In CIT v. Scindia Steam Navigation Co. Ltd., : [1961]42ITR589(SC) the Supreme Court has discussed as to when a question of law can be said to arise out of the order of the Tribunal.

11. Unless a question is raised before the Tribunal it cannot be said to arise out of the order of the Tribunal vide Provat Kumar Mitter v. CIT, : [1961]41ITR624(SC) , Karuppan Chettiar v. CIT (1969) 72 ITE 403; CIT v. Kamal Singhy Rampuria : [1970]75ITR157(SC) , Ramanathan v. CIT, : [1967]63ITR458(SC) . In the present

case it appears that the additional questions sought to be raised by learned counsel for the assessee e.g. question No. 3 mentioned in the application were not raised before the Tribunal. Hence, they cannot be said to arise out of the order of the CEGAT.

12. Learned counsel for the assessee urged that the extended period of time under Section 11A of the Central Excise Act would not apply. We cannot agree with the contention. There is a clear finding of suppression by the assessee and this is a finding of fact. Hence, the proviso to Section 11A applies.

The findings of the Tribunal are pure findings of fact and do not raise any question of law. The application is rejected.

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