

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Central Excise Appeal No. 35 of 2015 (O&M)
Date of decision: 4.10.2016

Commissioner of Central Excise, Delhi-III

.. Appellant

v.

M/s Honda Motorcycles and Scooters India Pvt. Ltd.

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Anshuman Chopra, Advocate for the appellant.
Mr. Amar Pratap Singh, Advocate for the respondent.

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Rajesh Bindal J.

The revenue is in appeal before this court raising the following substantial questions of law arising out of the order dated 5.11.2013, passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Appeal No. 2569/2011-EX (DB):

- “(i) Whether the CESTAT's final order is justified and legally correct which has been passed on technical issue without going into facts and merits of the case ?
- (ii) Whether the CESTAT's findings that no opinion was formed by the Committee of Commissioners and they just appended their signatures on the respective note sheet, were correct ?
- (iii) Whether the review order passed by the Committee of

Commissioners was legally correct which was signed on different dates and at different places ?

- (iv) Whether the review order passed by the Committee of Commissioners signed on different dates should be treated as individual decision or decision of Committee of Commissioners ?
- (v) Whether the Review order passed by the Committee of Commissioners after careful consideration of facts and merits of the case is illegal and not in accordance with provisions of Section 35 B of the CEA, 1944 ?
- (vi) Whether it is mandatory for the Committee of Commissioners constituted under Central Excise Act, 1944 for the purposes of review of Final Orders to sit together at one place ? Whether Common decisions taken by the Commissioners involved in same file on same issue by way of signing at different times will not be treated as joint decision of the Committee of review ?
- (vii) Whether the Review order has been signed without proper application of mind by the Commissioners ?
- (viii) Whether the CESTAT was correct in not considering the ratio of Hon'ble Allahabad High Court decision in the case of CCE, Kanpur vs Ufan Chemicals 2013 (290) EIT 217 (All.) ?
- (ix) Whether the CESTAT's final order dated 5.11.2013 is correct and legally justified in dismissing the revenue appeal during the pendency of Civil Appeal No.

7829/2004) and (SLP No. 22645/2004) filed by the Deptt. before Hon'ble Supreme Court of India containing similar issue ?”

Learned counsel for the appellant, while referring to the judgment of Delhi High Court in Commissioner of Service Tax v. L.R. Sharma, 2014 (35) S.T.R. 3 (Del.) and Commissioner of Service Tax v. Japan Airlines International Co. Ltd., 2015 (39) S.T.R. 541 (Del.), submitted that even if the Committee of Chief Commissioners opined on the file that the case is fit for filing appeal, while approving the opinion expressed by a subordinate officer, that is sufficient compliance of provisions of Section 35B (2) of the Central Excise Act, 1944 (for short, 'the Act').

On the other hand, learned counsel for the assessee submitted that as against the judgments of Delhi High court, being relied upon by the appellant, there are two orders passed by this Court in C.C.E., Delhi-III v. B. E. Office Automation Products Pvt. Ltd., 2010 (249) E.L.T. 24 (P&H) and Commissioner of Central Excise, Rohtak v. Elegant Enterprises, 2015 (323) E.L.T. 333 (P&H), wherein it has been opined that approval by the Committee of Commissioners on a note put up by the subordinate officer is not sufficient compliance for forming an opinion to decide that the case is fit for filing appeal.

He further submitted that the issue has lost significance for the reason that the Committee of Commissioners opined the case to be fit for filing appeal taking into consideration the fact that the Commissioner of Central Excise (Appeals) had decided the appeal filed by the assessee in its favour relying upon order passed by the Tribunal in Commissioner of Central Excise v. M/s Maruti Udyog Ltd., 2004 (173) E.L.T. 382

(hereinafter referred to as 'M/s Maruti Udyog Ltd.'s 1st case), against which Civil Appeal No. 7829 of 2004 was pending at that time before Hon'ble the Supreme Court.

Learned counsel for the respondent further submitted that the appeal filed by the revenue in 'M/s Maruti Udyog Ltd.'s 1st case (supra) was dismissed vide order dated 30.4.2015 in Commissioner of Central Excise v. Maruti Suzuki India Ltd., 2015 (319) E.L.T. 549 (SC) (hereinafter referred to as 'Maruti Suzuki India Ltd.'s 2nd case), hence, even on merits, there is no substance in the case set up by the revenue. Even if the matter is remanded back, it will be an exercise in futility. The shortage of inputs, as found in the case of Maruti Suzuki India Ltd.'s 2nd case (supra) was 0.24%, whereas in the case of the respondent, it was merely .0085%.

After hearing learned counsel for the parties and without going into the issue whether the appeal before the Tribunal was maintainable in the circumstances as noticed above, we find that the legal issue was decided in favour of the respondent by the Commissioner of Central Excise (Appeals) while referring to the order passed by the Tribunal in M/s Maruti Udyog Ltd.'s 1st case (supra). The case was found to be fit for filing appeal before the Tribunal only for the reason that the appeal against the order passed by the Tribunal in M/s Maruti Udyog Ltd.'s 1st case (supra) was pending before Hon'ble the Supreme Court at that time, however, the same has now been dismissed. As the legal issue involved in the case has already been decided in favour of the assessee, we do not find any reason to go into the issue as to whether the appeal filed by the revenue before the Tribunal was competent in view of alleged irregularity in the approval granted by the Committee of Commissioners.

For the reasons mentioned above, we do not find that any substantial question of law arises in the present appeal. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

4.10.2016
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