

Serial No2.
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Central Excise Ap.No.2/2024

Date of Order: 16.05.2024

The Commissioner of Central Goods & Services Tax and Central Excise, Shillong Commissionerate, Crescens Building, Mahatma Gandhi Road, Shillong-793001. Appellant

Vs.

M/s Walchandnagar Industries Limited, Walchandnagar, Tal Indapur, District Pune, Maharashtra-413114. Respondent

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance

For the Appellant : Dr. N. Mozika, DSGI with
Ms. L.M.D. Marak, Adv

For the Respondent : Mr. Bharat Raichandani, Adv

ORDER

(Made by the Hon'ble Chief Justice)

The present appeal has been preferred against the order of the Tribunal dated 23.06.2023 in Service Tax Appeal No.243 of 2012.

2. The main contention of the respondent is that the right of appeal relating to the value of service is not maintainable before this Court. However, both the parties stated that Section 35G deals with appeal to the High Court. At the time of introduction of the National Tax Tribunal Act, 2005 w.e.f. 01.07.2003, the said appeal provision was deleted. In view of the order of the Supreme Court staying the

provision, the old provision of Section 35G permitting the aggrieved party to prefer an appeal still exists. For the sake of convenience, Sections 35G and 35L are extracted below:

“35G. Appeal to High Court.—(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being 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), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—

- (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
- (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
- (c) in the form of memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.”

“35L. Appeal to Supreme Court.— (1) An Appeal shall lie to the Supreme Court from—

- (a) any judgment of the High Court delivered—
 - (i) in an appeal made under section 35G; or
 - (ii) on a reference made under section 35G by the Appellate Tribunal before 1st day of July, 2003;
 - (iii) on a reference made under section 35H,
- in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment,

the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty excise or to the value of goods for purpose of assessment.

(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability of excisability of goods for the purpose of assessment.”

3. Though there is an appellate remedy available to the appellant or to the aggrieved party in terms of Section 35G, the issue pertaining to the value of service cannot be agitated before this Court. The party has got right only before the Supreme Court in terms of Section 35L.

4. In view of the same, we reject the appeal preferred by the appellant giving liberty to the appellant to approach the Apex Court, if so advised. It is open to the parties to take a plea before the Supreme Court that the period during which this appeal is pending may be excluded for the purpose of limitation.

5. Accordingly, Central Excise Ap.No.2 of 2024 is dismissed.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
16.05.2024
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