

*Before Ajay Tewari & Avneesh Jhingan, JJ.*

**SANJEEV CHAUDHARY—Appellant**

*versus*

**UNION OF INDIA AND OTHERS—Respondents**

**STA No. 18 of 2016**

February 18, 2020

***Central Excise Act, 1944 – Sections 35l, 35g; Finance Act, 1994 – section 65 (19). Basic question for determination – taxability, excisability of good – appeal whether to high court or supreme court – Taxability depends on whether activity of Assessee is a business auxiliary service or not. Appeal in High Court not maintainable.***

*Held*, that from Section 35L(1) (b) of the Act it is evident that the appeal shall lie to the Supreme Court on the question in relation to rate of duty of excise of value of goods. Sub-Section(2) of Section 35L of the Act clarifies that the rate of duty shall include the determination of taxability or excisability of goods. In the present case, the issue involved is as to whether the activity of the appellant falls the definition of Section 65 (19) of the Finance Act, 1994 and thereby whether the cost of activity would form part and parcel of the charge levied by the Revenue.

(Para 4)

*Held*, that In our considered opinion, the case would be covered by Section 35L of the Act because taxability depends on whether the activity carried out by the Assessee is a business auxiliary service or not.

(Para 5)

*Held*, that At this stage, counsel for the appellant contends that apart from the issue relating to taxability and value of goods there are other issues also involved. Even if the said argument is accepted, the appeal would still lie under Section 35L of the Act to the Supreme Court.

(Para 6)

Neha Sonawane, Advocate and  
Amrita Garg, Advocate  
for the *Appellant*.

Sourabh Goel, Advocate

for the respondent.

**AJAY TEWARI, J. (oral)**

(1) The Assessee has come up in appeal against the order of the Tribunal dated 30.10.2015 holding that the entire amount coined from M/s Indian Oil Corporation is liable to be taxed.

(2) The primary objection taken by the Revenue is that this case would not be covered under Section 35G of the Central Excise Act, 1944 (*hereinafter referred to as 'the Act'*) but under Section 35L of the Act as the basic question for determination relates to taxability or excisability of goods.

(3) Both the said Sections of the Act are reproduced herein below:-

**“Section 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 purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Principal Chief Commissioner of Central Excise or 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 Principal Chief Commissioner of Central Excise or 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 a 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.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

**Provided** that nothing in this sub-Section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which –

(a) has not been determined by the Appellate Tribunal;  
or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-Section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section.

**Section 35L. Appeal to the 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 the 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 of excise or to the value of goods for purposes 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 or excisability of goods for the purpose of assessment.”

(4) That from Section 35L(1) (b) of the Act it is evident that the appeal shall lie to the Supreme Court on the question in relation to rate of duty of excise or value of goods. Sub-Section(2) of Section 35L of the Act clarifies that the rate of duty shall include the determination of taxability or excisability of goods. In the present case, the issue involved is as to whether the activity of the appellant falls within the definition of Section 65 (19) of the Finance Act, 1994 and thereby whether the cost of activity would form part and parcel of the charge levied by the Revenue.

(5) In our considered opinion, the case would be covered by Section 35L of the Act because taxability depends on whether the activity carried out by the Assessee is a business auxiliary service or not.

(6) At this stage, counsel for the appellant contends that apart from the issue relating to taxability and value of goods there are other issues also involved. Even if the said argument is accepted, the appeal would still lie under Section 35L of the Act to the Supreme Court. The argument raised has been dealt with by the Division Bench of this Court in CEA No.18 of 2016, titled as *Principal Commissioner of Central Excise and Service Tax vs.M/s Raja Dyeing, Ludhiana*, decided on 14.03.2017 and it was held that where the issue covered under Section 35L of the Act is involved, the appeal would lie to the Supreme Court.

(7) In the circumstances, the appeal is dismissed as not maintainable.

(8) Since the main case has been decided, the pending C.M. Application, if any, also stands disposed of.

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*Shubreet Kaur*