

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No(s). 2357-2361/2005

COMMISSIONER OF CENTRAL EXCISE

Appellant(s)

VERSUS

M/S. RAJ PETROLEUM PRODUCTS & ORS.

Respondent(s)

(with appln. (s) for ex-parte stay and office report)

Date : 11/05/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Jaideep Gupta, Sr. Adv.
Ms. Nisha Bagchi, Adv.
Mr. Arijit Prasad, Adv.
Mr. Subhash Acharya, Adv.
Ms. Sujeeta srivastava, Adv.
Ms. Pooja Sharma, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Vikram Nankani, Sr. Adv.
Mr. K. R. Sasiprabhu, Adv.
Mr. Robin V.S., Adv.
Mr. Vishnu Sharma, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(SUMAN WADHWA)
AR-cum-PS(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.

Signature Not Verified

Digitally signed by
Suman Wadhwa
Date: 2015.05.12
11:30:39 IST
Reason:IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2357-2361

OF 2005

Commnr. Of Central Excise

Appellant(s)

VERSUS

M/s. Raj Petroleum Products & Ors.

Respondent(s)

O R D E R

In paras 2 and 3 of the impugned decision of the Tribunal it has formulated three questions which had arisen for consideration and have answered those questions in favour of the assessee which are as under:

1. Whether the Order confirming the duty demand on account of alleged clandestine removal as contained in Annexure-A-1 to A-4.
2. Whether the modvat credit availed by the Appellants is to be disallowed as per Annexure A-5 and A-6 of the Show Cause Notice?
3. Whether interest & penalties as arrived can be upheld.

The appeal on the aforesaid aspects is not maintainable under Section 35L(b) of the Central Excise Act and in fact it could have been filed under 35-G of the said Act before the High Court. This is a preliminary objection taken by the respondent in its counter affidavit to the present appeal and the objection is sustainable. Having regard thereto, we dismiss these appeals as not maintainable giving liberty to the appellant prefer the appeal before the High Court.

Since the present appeal was filed bona fide by the Department which kept pending before this Court all these years, we are of the opinion that if the appeal is filed within one month from today by the Department, the same shall be entertained by the High Court on merits and shall not be dismissed on the ground of limitation. We would also request the High court to decide the said appeal expeditiously.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;

Date: 11.5.2015.