

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3187 OF 2008
(Arising out of SLP(C) No. 7249/2007)

M/S. G.T.C. INDUSTRIES LTD. ... APPELLANT(S)

:VERSUS:

COLLECTOR OF CENTRAL EXCISE AND ORS. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 3188 OF 2008
(Arising out of SLP(C) No. 8499/2007)

CIVIL APPEAL NO. 3189 OF 2008
(Arising out of SLP(C) No. 10100/2007)

ORDER

1. Leave granted.
2. Appellants herein, inter alia, questioned the constitutionality of Section 9-D of the Central Excise and Salt Act, 1944. The High Court by reason of the impugned judgments and orders has dismissed the writ petitions filed by the appellant(s) on the premise that some appeals are pending before this Court involving the said question. Before us, the learned counsel appearing on behalf of the parties have placed the details of the appeals pending before this Court which are:

WRIT NO.	POSITION IN CEGAT	POSITION IN SUPREME COURT
1854/1992	The CEGAT decided the Appeal on merits in favour of both the Petitioner and the job worker vide order dated 21.3.2001. The Department has filed an Appeal under Section 35L of the Central Excise Act 1944 before the Hon'ble Supreme Court being Civil Appeal No.6398-6403/02.	The Court has admitted the Appeal without granting any interim stay. Last listed on 27.9.2002.
1895/1992	The CEGAT decided the Appeal on merits in favour of both the Petitioner and the job worker vide order dated 21.3.2001. The Department has filed an Appeal under section 35L of the Central Excise Act 1944 before the Hon'ble Supreme Court being Civil Appeal No. 6398-6403/02.	The Court has admitted the Appeal without granting any interim stay. Last listed on 27.9.2002.
1896/1992	The CEGAT in Appeal Nos.5208/92-D and 5233/92-D confirmed the demand against the Petitioner vide order dated 4.3.1997. The Petitioner thereafter filed Civil Appeal No.5134-35/97 before the Hon'ble Supreme Court against the said order.	The Hon'ble Supreme Court dismissed the Appeal bearing No. 5134-35/97 vide order dated 12.9.97 for want of pre-deposit (Copies enclosed).
1897/1992	The CEGAT after considering the application under Section 35F of the Central Excise Act, 1944 seeking waiver of the pre-deposit of the Duty and penalty demanded, dismissed the same and directed the Petitioner and the job workers to deposit the same. Since the Petitioner did not comply with the said order, the Appeals filed by them were dismissed for non-compliance of the above order on 15.7.1994 and 7.2.1996 (Copies enclosed)	
1898/1992	The CEGAT confirmed the demand against the Petitioner vide order dated 4.7.1997. The Petitioner thereafter filed Civil Appeal No. 5134-35/97 before the Hon'ble Supreme Court against the said order.	The Hon'ble Supreme Court dismissed the Appeal bearing No. 5134-35/97 vide order dated 12.9.97 for want of pre-deposit.

3. None of the aforementioned appeals, it is accepted at the Bar, involve the question of constitutionality of Section 9-D of the Act; nor having regard to the fact that the appeals were filed by the Revenue itself, such a question could possibly be raised. Furthermore, such a question as regards the constitutionality of a statute cannot be raised either before the authorities under the statute, including the High Court and this Court, while deciding the appeals against the orders passed by the statutory authorities/Tribunals, the First Appellate Court. The question stands covered by a decision of this Court in Dhula Bhai vs. State of M.P., (1968 (3) SCR 662); West Bengal Electricity Regulatory Commission vs. CESC Ltd., (2002 (8) SCC 715) and Alpha Chem vs. State of U.P., (89 STC 304).

4. Mr. Shekhar, learned senior counsel appearing on behalf of the respondents has drawn our attention to an order dated 3.1.1995 passed by a Bench of this Court in Civil Appeal arising out SLP(C) No.21831/1994 which is to the following effect:

“The impugned order dated 5.9.94 has to be read along with Section 9D of the Central Excise and Salt Act, 1944. So read, there is no infirmity in the impugned order.

It may, however, be clarified that in case reliance is placed on the provisions of Section 9D of the Act in respect of any particular witness, intimation of the same is required to be given to the respondents and it would be open to the respondents to approach the High Court against the order made by the authority in that behalf.”

5. Apart from the fact that by reason of the said order the parties have been granted liberty to question the violation of the said provision or the question of contravention of the said provision in respect of a particular witness, no embargo has been created thereby to challenge the validity of the said provision by the appellants before the writ Court or any superior Court.

6. Mr. Shekhar submits that it is not a case where the appellant should be permitted to raise such question in view of the fact that no cause of action has arisen therefor.

7. The High Court, as noticed hereinbefore, did not decide the question of constitutionality of the said provision, nor did it determine the objection of the respondents that no cause of action had arisen therefor.

8. We are, therefore, of the opinion that interest of justice would be subserved if the impugned judgments are set aside and the matters are remitted back to the High Court for consideration thereof afresh. We direct accordingly.

9. The appeals are disposed of with the aforementioned observations and direction.

10. However, as these matters are pending for a long time, we would request the High Court to consider the desirability of disposing of the writ petitions, filed by the appellants, as expeditiously as possible, preferably within a period of three months

from the date of communication of this order. All contentions of the parties shall remain open.

.....J
(S.B. SINHA)

.....J
(LOKESHWAR SINGH PANTA)

NEW DELHI,
APRIL 25, 2008.