Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 312 of 2012

[Arising out of Order-in-Appeal No OIA-1-28-2012-COMMR-A-RBT-RAJ dated 23.01.2012 passed by Commissioner (Appeal) of Central Excise & ST, Rajkot]

Commissioner of Central Excise & ST, Rajkot .... Appellant
Central Excise Bhavan,
Race Course Ring Road, Income Tax Office,
Rajkot, Gujarat-360001

VERSUS

Nayara Energy Limited .... Respondent
Khambhalia,
Jamnagar, Gujarat

WITH

(i) Excise Appeal No. 313 of 2012 (Nayara Energy Limited)
(ii) Excise Appeal No. 314 of 2012 (Nayara Energy Limited)
(iii) Excise Appeal No. 315 of 2012 (Nayara Energy Limited)
(iv) Excise Appeal No. 316 of 2012 (Nayara Energy Limited)
(v) Excise Appeal No. 317 of 2012 (Nayara Energy Limited)
(vi) Excise Appeal No. 318 of 2012 (Nayara Energy Limited)
(vii) Excise Appeal No. 319 of 2012 (Nayara Energy Limited)
(viii) Excise Appeal No. 320 of 2012 (Nayara Energy Limited)
(ix) Excise Appeal No. 321 of 2012 (Nayara Energy Limited)
(x) Excise Appeal No. 322 of 2012 (Nayara Energy Limited)
(xi) Excise Appeal No. 323 of 2012 (Nayara Energy Limited)
(xii) Excise Appeal No. 324 of 2012 (Nayara Energy Limited)
(xiii) Excise Appeal No. 325 of 2012 (Nayara Energy Limited)
(xiv) Excise Appeal No. 326 of 2012 (Nayara Energy Limited)
(xv) Excise Appeal No. 327 of 2012 (Nayara Energy Limited)
(xvi) Excise Appeal No. 328 of 2012 (Nayara Energy Limited)
(xvii) Excise Appeal No. 329 of 2012 (Nayara Energy Limited)

[Arising out of Order-in-Appeal No OIA-1-28-2012-COMMR-A-RBT-RAJ dated 23.01.2012 passed by Commissioner (Appeal) of Central Excise & ST, Rajkot]

APPEARANCE :

Shri Gobind Jha, Superintendent (AR) for the Appellant-Revenue
Ms. Dimple Gohil, Advocate for the Respondent-Assessee

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11733-11750 / 2019

DATE OF HEARING/ DECISION : 12.09.2019

RAMESH NAIR :

Ms. Dimple Gohil, Ld. Counsel appearing on behalf of the respondents raised a preliminary issue of maintainability of appeals before this Tribunal. She submits that the issue involved is fixation of brand rate of duty drawback. As per Section 129(1)(b) of the Customs Act, 1962, the matter relates to draw back and where the impugned orders passed by Commissioner (Appeals), the jurisdiction to appeal lies with the revisionary authority, Govt. of India. She placed reliance on the decision of this Tribunal in their own case, reported at CCE, Rajkot vs. Essar Oil Limited – 2016 (339) ELT 148 (Tri. Ahmd.)

2. Shri L. Patra, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue-appellant, submits that the decision in the case of Essar Oil Limited (supra) has been appealed against before the Hon'ble Gujarat High Court and the Hon'ble High Court has admitted the appeal, reported at - 2016 (339) ELT A53 (Guj.).

3. We heard both sides and perused the record. We find that Section 129(1)(b) of the Customs Act, reads as under:-

Section 129A(1) in the Customs Act, 1962

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 128A;

(c) an order passed by the Board or the Appellate Commissioner of Customs under section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section, as it stood immediately before that day.

[PROVIDED that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder:

From plain reading of the above Section, it is amply clear that where the impugned order is passed by Commissioner (Appeals) and the issue involved is of payment of drawback, the proper authority before the application is to be made is Revisionary Authority, Govt. of India. Therefore, this Tribunal has no jurisdiction to entertain the appeal relating to issue involved of payment of drawback. Though the Tribunal order in the case of Essar Oil Limited (supra), has been challenged by the Revenue before the Hon'ble Gujarat High Court but there is no stay on operation of the order of this Tribunal. Accordingly, considering the statutory provisions and decision of this Tribunal in Essar Oil Limited (supra), we are of the view that this Tribunal has no jurisdiction in present appeals. Accordingly the appeals are dismissed as non-maintainable. Revenue is at liberty to file revision application before the appropriate authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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