CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 10289 of 2021-SM

[Arising out of Order-in-Appeal No. AHM-CUSTM-000-APP-775-20-21 dated 17.02.2021 passed by Commissioner of Customs, Ahmedabad]

Meghmani Industries Limited .... **Appellant**
Plot No. 27, Phase-1, GIDC Industrial Estate Vatva,
Ahmedabad - 382445

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad 380009

APPEARANCE :

Shri Sudhanshu Bissa, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 10.07.2026

FINAL ORDER NO. 10412/2026

DR. AJAYA KRISHNA VISHVESHA :

Learned Counsel Shri Sudhanshu Bissa, Advocate is present for the appellant and learned AR is present for the department. I have heard the arguments from both the sides.

2. The learned Counsel for the appellant submitted that he has already argued the matter on merits and thereafter the matter was relisted. Learned Counsel submits that he has gone through the letter dated 17.09.2025 issued by learned AR in which it has been stated that the appeal in question is regarding release of short paid duty drawback against OIA No. AHM-CUSTM-000-APP-775-20-21 dated 17.02.2021 passed by learned Commissioner (Appeals). In the preamble of the said Order-in-Appeal, following has been mentioned:-

"As per Section 129DD of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Review Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order:

(a) Any goods imported on 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 of Customs Act, 1962 and the rules made thereunder."

Learned AR has also enclosed copy of judgment in the case of **Avanti Overseas Pvt. Limited** vs. **Commissioner of C. Ex. & Cus., New Delhi -** 2018 (363) E.L.T. 969 (Tri.-Del).

3. I have gone through the order passed in **Avanti Overseas Pvt. Limited** (supra) in which it has been held:-

"**13.** The above factual deals will make it manifestly clear that the present dispute is essentially with reference to drawback claim filed by the appellant and is clearly barred for appeal before the Tribunal in view of the above statutory provisions. It is clear that the primary dispute is not with reference to the status of the appellant, whether 100% EOU or not, though the same is the basis for resolving the dispute with reference to the claim of the appellant for drawback. The evidence or reason for a decision by itself cannot be considered as point of dispute. In other words, it is the claim of the appellant for drawback which is the point of dispute and the basis or evidence for resolving such dispute cannot alter the nature or essence of dispute.

14. With due regard, I also find that the case laws referred to by the Ld. Member (Judicial) have no application to the facts which are narrated above. It is noted that while examining an appeal by the Revenue in *DCS International Trading Company (P) Ltd.* - 2017-TIOL-2093-CESTAT-DEL, the Tribunal relying on various earlier decisions held that when the main issue is export rebate which may be linked with some other issues, the Tribunal has no jurisdiction to take up the appeal against the order of Commissioner (Appeals). It was held that when an appeal is involved, the question of fact/law of both drawback as well as classification, the appeal cannot be maintained before the Tribunal. It is to be further noted that in *M/s. ESSAR Overseas Company,* 2017 (348) E.L.T. 171 (Tri. - Mumbai), the Tribunal held that payment of drawback also includes the recovery of drawback. Any proceedings for recovery of drawback cannot be appealed before the Tribunal when the order is passed by Commissioner (Appeals).

15. In view of the above analysis, I find that the present appeal cannot be entertained by the Tribunal in view of the statutory bar mentioned above. When the appeal is not

> maintainable due to lack of jurisdiction, the question of examining the merits of the appeal does not arise."

4. In view of the legal position as mentioned above, I am of the view that this appeal is not maintainable before this Tribunal and the jurisdiction to entertain it lies with the Revisionary Authority of Government of India.

5. Therefore, the registry is directed to return the appeal to the appellant for presentation before the proper forum.

6. The learned Counsel for the appellant has also submitted that as he has litigated the matter before this Tribunal under good faith that this Tribunal has jurisdiction to decide the appeal, therefore, the period spent in the litigation before the Tribunal should be excluded while computing the period of limitation, as per law. The Revisionary Authority shall consider this prayer and may take a decision in accordance with law.

6. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open court)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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