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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/124 /2006 – SM[BR] Date 27/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HIGH POLYMER LABS LTD.
VILL-DUDHAULA,TEHSIL
PALWAL,FARIDABAD(HARYANA)

M/S HIGH POLYMER LABS LTD. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1543 / 2008- SM[BR] Dated 3.10.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.RUPESH KUMAR
   46, BANK ENCLAVE, DELHI

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.124/2006 -SM

(Arising out of order in appeal No. 90/CE/Appl/DLH.IV/2005 dated 14.10.2005 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

No

Yes

M/s High Polymer Labs Ltd — Appellant
(Rep. by Shri Harpreet Singh, Advocate)

Vs

CCE, Delhi-IV — Respondent
(Rep. by Shri R.K. Saini, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 3.10.08

Final Order No. 1543 /2008-SM(BR)

Per P.K. Das:

The learned DR raised a preliminary objection to the maintainability of the appeal filed by the appellant. He submits that the issue relates to refund of Central Excise duty on the loss of inputs destroyed in fire. He submits that the appeal filed by the appellant against the order of the Commissioner (Appeals) is not maintainable before the Tribunal in terms of clause (b) of sub-section (1) of Section 35-B of Central Excise Act, 1944. The learned Advocate submits that the appeal relates to demand of duty and it is not a case of loss of goods in storage. He submits that the appeal has been filed against the of order of Commissioner (Appeals).

2. After hearing both the sides and on perusal of the record, it is seen that the appeal relates to remission of duty on inputs destroyed in fire on "work in progress" goods. Clause (b) of sub-section (1) of Section 35-B of Central Excise Act relates to loss of goods occurring in transit from a factory ~~to~~ or a warehouse, another factory or from one to another, or during the course of producing of the goods in a warehouse or in storage, waiver in a factory or warehouse, no appeal would lie to the Tribunal against order of Commissioner (Appeal). The present appeal relates to loss of goods during the course of processing of goods in a factory and the order was passed by the Commissioner (Appeals). Therefore, the appeal is not maintainable before the Tribunal.

3. The learned DR placed the decision of the Larger Bench in the case of CCE Jamshedpur Vs Tisco Ltd reported in 2008 (227) ELT 203 (Tri- LB) . The larger Bench of the Tribunal held that loss of goods in whatever way or form, is a loss and so long as such loss occurs in storage, it is a loss and the appeal does not lie before the Tribunal. However, the party is aggrieved by

the impugned order may file revision application before the Central Government under Section 35-EE of the Act. The relevant portion of the decision of the Larger Bench in the case of TISCO Ltd is reproduced below:-

*"4.In course of hearing our attention was drawn to a decision of the Hon'ble Madras High Court in India Pistons Ltd Vs Assistant Collector of Central Excise, Madras and others (1987 (27) ELT 651 (Mad) in which it has been held that while the Tribunal has no power to transfer an appeal to the Central Government for disposal, the appeal papers may be returned to the Department for proper presentation before a forum having jurisdiction if so advised. We accordingly direct that the appeal papers be returned to the Department to enable it to file revision before the appropriate authority of the Central government under Section 35-EE of the Act.*

*5. Though it is not necessary to say so, in order to obviate any misgivings in this regard, we would like to clarify that the period spent during pendency of these appeals before the Tribunal shall not stand in the way of the department in having the delay, if any, condoned by the appropriate authority, as we are satisfied that the appeals were filed bona fide under proper legal advice."*

4. In view of decision of the Larger Bench, the appeal is dismissed as not maintainable. The appellant may file a revision before the appropriate authority of the Central Government under Section 35-EE of the Act and the appropriate authority may condone the delay, if any, if they are satisfied that the appeals are filed bonafide under proper legal advice.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)