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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/433 /2007 – SM[BR] Date 03/05/2010

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

To :
M/S MALWA COTTON SPINNING MILLS LTD.
RAJKOT ROAD, BARNALA, DISTT.-SANGRUR (PB)

M/S MALWA COTTON SPINNING MILLS LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 476 / 2010-SM[BR] dated 29.4.2010 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. LUDHIANA
   F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file
15. TAXINDIAONLINE. COM PVT. LTD. UNIT NO.1,2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 433 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 114/CE/Ldh/2006 dated 24.11.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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

M/s. Malwa Cotton Spinning Mills Ltd. — Appellants

Vs.

Commissioner of Central Excise Ludhiana — Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the Appellants
Shri I. Baig, SDR for the Respondent

Date of Hearing/decision : 29.4.2010

final. **ORAL ORDER NO. 476/2010 SM (BR)**

Per M. Veeraiyan:

When the appeal was taken for hearing on 28.4.2010, Learned SDR raised a preliminary objection on the jurisdiction of the Tribunal to hear the appeal. At the request of the learned Advocate, the matter was adjourned to today for hearing on the preliminary objection.

2. Learned SDR submits that the appellants executed bond with the Excise authorities and removed the goods for export to Bangla Desh and they did not submit the proof of export within stipulated time and consequently, duty stands demanded. The appellants are claiming that the impugned goods have been exported to Bangla Desh. By their own submission, the matter relates to exported goods and therefore in terms of proviso to section 35 B (1) of the Central Excise Act, 1944, the case is outside the jurisdiction of the Tribunal. Learned DR relies on the decision of the Tribunal in the case of Pankaj Polymers Ltd. vs. CCE, Nagpur reported as [2008 (222) ELT 247 (Tri-Mumbai)].

3. The learned Advocate submits that the show cause notice was issued alleging that the goods have not been exported; the original authority and Commissioner (Appeals) have held that the goods have not been exported. Therefore, the department's preliminary objection is contrary to the stand taken by the lower authorities. Learned Advocate also submitted that preamble of the order of the Commissioner (Appeals) mention the CESTAT

as the appellate forum. According to the learned Advocate the Tribunal is competent to hear this appeal.

4. I have carefully considered the submissions from both sides. Proviso to Section 35B reads as follows:

> "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) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
>
> (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
>
> (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
>
> (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No. 2) Act, 1998."

5. I find the impugned goods, undisputedly, were cleared from the factory for export under bond to Bangla Desh. The finding of the Department is to the effect that the goods have not been exported as

prescribed. The claim of the appellant is that the goods have been exported.

6. I find that the order of the Commissioner definitely relates to "goods exported outside India without payment of duty", inasmuch as the goods have been cleared by the appellant from the factory for export and the dispute is about the fact of export of the goods as per the conditions and the terms of bond. Therefore, the objection raised by the learned SDR, in my opinion is ~~liable~~ Valid. When the jurisdiction is not there as per the law, the Commissioner (Appeals) mentioning the CESTAT as appellate forum in the preamble cannot confer jurisdiction on the Tribunal.

7. The appeal is, therefore, dismissed as not maintainable before the Tribunal.

(M. Veeraiyan)
Member(Technical)

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