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

Date 11/07/2011

Appeal No. E/76 /2011-77 /2011 - EX[DB] WITH
E/S/98-99/2011-EX

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

To :
M/S GILCO EXPORTS LTD.,
VILL. GHOLUMAJRA, DERABASSI.

M/S GILCO EXPORTS LTD., Appellant

Vs

C.C.E. CHANDIGARH Respondent

STAY ORDER NO. 704-705/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.**572-573/ **2011 EX|DB|** dated 04-7-11

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT
15. M/S GILCO OVERSEAS,
VILL. GHOLUMAJRA, DERABASSI.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

PRINCIPAL BENCH
COURT-1

Excise Stay Application No.98-99 of 2011 in
Central Excise Appeal No.76-77 of 2011

M/s.Gilco Exports Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

Present for the Appellant: Shri V.Kackria, Advocate
Present for the Respondent: Shri N.Pathak, SDR

Coram:Hon'ble Mr.Justice R.M.S.Khandeparkar, President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing: 04.07.2011
Date of Decision: 04.07.2011

Stay **ORDER NO.** 704-705/2011-EX

PER: JUSTICE R.M.S.KHANDEPARKAR

As we propose to dispose of the appeals themselves, the Stay application No.98 and 99 of 2011 are disposed of without insisting any pre-deposit while directing the Registry to place the appeals for final disposal forthwith.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(M.VEERAIYAN)
MEMBER (TECHNICAL)

mk

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

PRINCIPAL BENCH
COURT-1

Central Excise Appeal No.76-77 of 2011

(Arising out of Order-in-Appeal No.255-257/CE/Appeal/CHD-I/2010 dated 26.10.10 passed by the CCE (A), Chandigarh)

For approval and signature:

Hon'ble Hon'ble Mr. Justice R.M.S.Khandeparkar, President
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?	Yn
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yn
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.Gilco Exports Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

Present for the Appellant: Shri V.Kackria, Advocate
Present for the Respondent: Shri N.Pathak, SDR

Coram:Hon'ble Mr.Justice R.M.S.Khandeparkar, President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing: 04.07.2011
Date of Decision: 04.07.2011

FINAL **ORDER NO.** 572 & 573 / 2011 - EX

PER: JUSTICE R.M.S.KHANDEPARKAR

These appeals have been heard in terms of order passed today in Excise Stay application No.98 and 99 of 2011.

2. JCDR raises preliminary objection in the matter regarding the maintainability of the appeals while drawing our attention to the proviso to Section 35B (1) of Central Excise Act, 1944. He submits that the impugned order has been passed in the recovery proceeding relating to rebate of duty of excise.

3. On the other hand, learned Advocate for the appellants has sought to contend that the recovery proceedings are in terms of Section 11A of the said Act, besides there being an issue of classification involved and it is apparent from the observation made by the Commissioner (Appeals) in its order.

4. Proviso to Section 35B(1) of the said Act clearly provides 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 passed by the Commissioner (Appeals) under Section 35A if such order relating to rebate of duty of excise on goods exported to any country or territory outside India or on excisable goods materials used in the manufacture of goods which are exported to any country or territory outside India. Obviously, therefore, in case the order relates to rebate of duty of excise, the same will be out of judicial review by this Tribunal and the jurisdiction in that regard would vest in the Central Government in terms of Section 35EE of Central Excise Act, 1944.

5. The statutory provision comprised under proviso to Section 35B clearly uses the expression "if such order relates to rebate of duty of excise". The word 'relate' has been defined in the Black's Law Dictionary (Fifth Edition page 1258) to mean "to stand in some

relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; with "to".

6. The provision of law not only speaks of non maintainability of appeal in relation to the specified orders but it also speaks of absence of jurisdiction to the Tribunal to entertain or deal with the appeal against such order. If we peruse the order passed by the original authority which is sought to be challenged, it is undoubtedly a matter relating to recovery of amount but the one which was erroneously sanctioned as "rebate". Being so, the dispute is clearly related to rebate amount. Taking into consideration the meaning of expression "relate" in Section 35B(1) of the said Act, it has to be given a wide meaning and considering the same not only the order relating to the grant of claim or rejection of rebate but even any order relating to consequences which could follow from such order would be beyond the scope of judicial review by the Tribunal.

7. The contention of the learned Advocate that the issue of classification is also involved in the matter has to be rejected. Undisputedly from the records, it appears that such issue was definitely involved prior to consideration of claim of rebate. It is not in dispute that the matter relating to claim of rebate was finally decided by the lower authorities earlier which had been subjected to appeal and further proceedings in that regard. The issue of classification was not there for consideration in recovery proceedings. The recovery proceedings were merely proceedings in the nature of execution of main order passed earlier which had already attained finality. Being so

reiteration of views expressed in the earlier proceedings by the authorities while dealing with the matter on merits, that itself would not be sufficient to contend that the issue of classification is also involved in the present proceedings. The present proceedings are confined to the issue relating to recovery of the amount which was given on "rebate".

8. For the reasons stated above, we find that the appeals in question are not maintainable taking into consideration the provisions of law comprised under Section 35B(1) of Central Excise Act, 1944. Hence, the appeals are accordingly rejected.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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