FAX : 011-26108426

REGISTERED / AD

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

Dated: **13/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1368/2012-EX[DB]**, Stay Order No. **SO/1968/2012** and dated **22/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

**Asstt. Registrar(EXCISE Appeal Branch)**

| | Application | Appeal | Name and Address of Appellant |
|---|---|---|---|
| 1 | E/Stay/3313/2012 | E/2610/2012 | **Sterling Cast And Forge**<br>Shivpuri Road, Basti Daishmandan,<br>Jalandhar. |
| | | | Name and Address of Respondent |
| 2 | | | **C.C.E. & S.T.-Ludhiana**<br>CENTRAL EXCISE HOUSE...F -<br>BLOCK,<br>RISHI NAGAR,<br>LUDHIANA,<br>PUNJAB<br>141001 |

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**Copy To**
3Advocate(s) / Consultant(s):

**Naveen Bindal**
**NO. 2307/1, SECTOR 38-C,**
**CHANDIGARH**

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**4** Bar Association, CESTAT, Delhi

**5** Director Publications, Customs, Excise. I.P. Estate, Delhi

**6** M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

**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, Satellite Road, Ahmedabad-15

**10** LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

**11** TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

**12** Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

**13** C.D.R. **14** Office Copy **15** Guard File

**Asstt. Registrar(EXCISE Appeal Branch)**

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING/DECISION : 22/11/2012.**

**Excise Stay Application No. 3313 of 2012 in Appeal No. 2610 of 2012**

[Arising out of the Order-in-Original No. 162-163/CE/ADC/LDH/ 2010 dated 10/09/2010 passed by The Additional Commissioner, Central Excise, Jalandhar.]

**Hon'ble Shri Justice Ajit Bharihoke, President**
**Hon'ble Shri Rakesh Kumar, 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? | : |
| 2. | Whether it would 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 Department Authorities? | : |

M/s Sterling Cast & Forge — Appellant

Versus

CCE, Ludhiana — Respondent

**Appearance**

Shri Naveen Bindal, Advocate – for the Appellant.

Shri A.K. Jain, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

STAY oral order No. 1968/2012-EX(BR)
FINAL Oral Order No. A/1368/2012-EX(BR)

**Shri Justice Ajit Bharihoke :-**

The appellant is aggrieved of the order of the Commissioner (Appeals) dated 24/04/2012 whereby he disposed of the stay application of the appellant under first proviso to Section 35F of the Central Excise Act and directed the appellant to deposit entire duty demand confirmed against them by the Adjudicating Authority within a specified period as a pre-condition to hearing of the appeal filed against the order-in-original.

2. Though the matter is listed today for disposal of the stay application since question regarding maintainability of this appeal in law is involved, we have proceeded to hearing final arguments.

3. Learned Shri Naveen Bindal, Advocate for the appellants, submits that being aggrieved of the impugned order, the appellant filed writ petition in the Hon'ble High Court of Punjab & Haryana and during the course of hearing, the Hon'ble High Court was of the view that the writ petition was not maintainable. Accordingly, the appellant withdraw the writ petition with liberty to prefer an appeal before the Tribunal. In the same breath, Shri Naveen Bindal, learned advocate further pleaded that though in his opinion, the order of pre-deposit passed under Section 35F is not appealable, he has filed this appeal only with a view to obtain the view of the CESTAT.

4. We have perused the order of Hon'ble High Court dated 08/08/2012. In the said order it is nowhere mentioned that impugned order is an appealable order. Hon'ble High Court has only permitted the appellant to withdraw the writ petition with liberty to take recourse to legal remedy available to him in accordance with law.

5. Section 35B of the Central Excise Act, 1944 deals with the appeal to the Appellate Tribunal and it reads thus :-

> "**35B. Appeals to the Appellate Tribunal.-** (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 Central Excise as an adjudicating authority;
>
> (b) an order passed by the Commissioner (Appeals) under section 35A;
>
> (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;
>
> (d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, 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) 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 utilised 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;

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 47 of the

Finance Act, 1984, before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1B) (i) The Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963) may, by notification in the Official Gazette, constitute such committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has

been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees, but not exceeding fifty lakhs rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross objections referred to in sub-section (4)

(7) Every application made before the Appellate Tribunal, -

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub section".

6. On bare reading of the above provisions, it is evident that a party aggrieved of the order passed by the Commissioner under Section 35A can prefer an appeal before the Tribunal. Admittedly, the impugned order has been passed under Section 35F of the Central Excise Act. Therefore, in our considered view, this appeal is not maintainable and is accordingly dismissed.

**(Justice Ajit Bharihoke)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK