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. III

DATE OF HEARING/DECISION : 27/04/2017.

Excise Appeals No. 1196-1197 of 2011

[Arising out of the Order-in-Appeal No. 53-54 (DKV)/CE/JPR-I/ 2011 dated 15/02/2011 passed by The Commissioner (Appeals), Central Excise – I, Jaipur.]

M/s KEI Industries Ltd. Appellant

Versus

CCE, Jaipur – I Respondent

Appearance

Shri P.K. Mittal, Advocate – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53140-53141/2017 Dated : 27/04/2017

Per. B. Ravichandran :-

The appeal is against order dated 15/02/2011 of Commissioner (Appeals – I), Jaipur. The appellant exported power cables and claimed rebate under Notification 94/2004-CUS dated 10/09/2004, in terms of Rule 18 of Central Excise Rules, 2002. The claims were rejected by the Original Authority by its order dated 09/08/2010 which was upheld by the impugned order.

2. The learned Counsel appearing for the appellant submitted that in identical set of facts, the Tribunal allowed the claim of the parties and he referred a few decisions including **Indorama Synthetics (I) Ltd. vs. CCE & CUS., Nagpur** reported in **2013 (296) E.L.T. 411 (Tri. – Mumbai)**.

3. The learned AR contested the maintainability of the appeal in terms of proviso to Section 35B. The said proviso states that no appeal shall lie to the appellate Tribunal in respect of any orders passed by Commissioner (Appeals) which relates to a rebate of duty of excise on goods exported out of country. The appeal in such cases should be with Revision Authority, Government of India.

4. We find that the point on jurisdiction raised by the learned AR is legally correct. The Tribunal is barred in entertaining appeal dealing with rebate when such appeal is against order passed by Commissioner (Appeals). Accordingly, we find the present appeals are not maintainable before us. The appellant is free to pursue remedy in the appropriate forum. The appeals are dismissed as non-maintainable.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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