CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

<u>COURT-IV</u>

Date of hearing: 25.08.2017

Appeal No. C/724/2005 & C/295/2006-CU[SM]

[Arising out of the Order-in-Original No. VIII(ICD)6/TKD/Adj/Commr/88/05 dated 13.07.2005, passed by the Commissioner of Central Excise, New Delhi]

M/s. Texcomash Export &
Shri N.K. Rajgarhia
C.C.E. New Delhi … Appellant

Vs.

C.C.E. Jaipur-I
M/s. Texcomash Export ... Respondent

Appearance:

Present Shri A.K. Singh, Advocate for the appellant
Present Shri Ubhav Sengraj, DR for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Judicial Member

<u>FINAL ORDER No. 56848-56849/2017</u>

<u>Per Ashok Jindal:</u>

Today matter was called for hearing. Ld. Counsel for the appellant submits that the DRI officers has no jurisdiction to issue show cause notice for rejection of drawback under rule 16 of Customs, Central Excise duties and Service Tax Draw Back Rules 1995 in light of the decision of this Tribunal in the case of ***Monte International Vs. CC Amritsar 2016 (340) ELT 345 (Tri-Del).***

2. On the other hand, ld. AR oppose the contention of the ld. Counsel and submits that as this is second round of litigation and on the earlier round of litigation the matter was remanded back to the adjudicating authority with certain direction to be complied with.

3. In the earlier round of litigation the appellant did not raise any issue of jurisdiction and the Tribunal has also not considered the issue of jurisdiction. Therefore, at this stage issue of jurisdiction cannot be raised. It is further submitted that as in this matter and issue of jurisdiction, therefore the matter is required to be heard by the Division bench.

4. Heard the parties and considered the submissions.

5. The ld. DR has not disputed the fact that the DRI has no jurisdiction to issue show cause notice under rule 16 of Customs Central Excise Duty And Services Draw Back Rules 1995. The only objection raised by the Ld. AR is that in the earlier round of litigation, neither this Tribunal nor the Ld. Counsel for the appellant raised the issue of jurisdiction. Therefore, the same cannot be raised at this stage. I find that the issue of jurisdiction is a legal issue which can be raised at any stage of proceedings. Therefore, the objection raised by the Ld. DR is not tenable. Accordingly, the same is turned down.

5. It is further contended by the Ld. AR that as it is a question of deciding the issue of jurisdiction of DRI, therefore, the matter is to be heard by Division Bench. I find that the decision of Larger Bench of the Tribunal is available before me

wherein it has been decided that DRI has no jurisdiction to issue SCN under Rule 16 of Customs Central Excise Duty And Services Draw Back Rules 1995. Therefore, I am bound by the decision of the Larger Bench of this Tribunal. Therefore, the said objection raised by the Ld. AR is also turned down.

6. As it is an admitted fact in the light of the decision of this Tribunal in the case of ***Monte International (Supra)*** wherein it has been held that DRI is not a proper officer to issue show cause notice under rule 16 of Customs Central Excise Duty And Services Draw Back Rules 1995. Therefore, I hold that the show cause notice is beyond jurisdiction. Accordingly, the show cause notice and the impugned proceedings are set aside. Consequently, the appeals are allowed with consequential relief.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Judicial Member

Bhanu