

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Bench – SMB  
Court – I

**Appeal No. E/30716/2018**

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-214-17-18,  
dated 31.01.2018 passed by Commissioner of Customs & Central Tax  
(Appeals), Guntur)

**M/s Asia Pacific Resources Pvt. Ltd.,** .....Appellant(s)

**Vs.**

**Commissioner of Central Tax & Customs,  
Visakhapatnam – G S T** .....Respondent(s)

**Appearance**

Shri N. V. Ramana Rao, Advocate for the Appellant.

Shri AVLN Chary, Superintendent (AR) for the Respondent.

**Coram:**

**Hon'ble Mr. P. Venkata Subba Rao, Member (Technical)**

**Date of hearing: 11/12/2018**

**Date of decision: 11/12/2018**

**FINAL ORDER No. A/31556/2018**

**[Order per: P. Venkata Subba Rao]**

Heard both sides and perused the records.

2. This appeal is filed against Order-in-Appeal No. VIZ-EXCUS-001-APP-214-17-18, dated 31.01.2018. The facts of the case in brief are that the appellant herein are registered dealers and had exported goods as merchant exports and filed rebate claim of Central

Excise duty paid by them and the rebate was allowed by the lower authority. On an appeal by the Department, the First Appellate Authority has reversed the decision and set aside the Order-in-Original in its entirety. The preamble of the impugned order indicates in para 2 that "any person aggrieved by this Order, may appeal to the CESTAT, Hyderabad under Section 35B(1) of the Central Excise Act, 1944". Learned Counsel submits that the First Appellate Authority has reviewed the order of the lower authority but no notice was given to them although they were given an opportunity of being heard and appellant given written submissions before the First Appellate Authority. On specific query from the Bench regarding the jurisdiction of the Tribunal in matters related to rebate to export of the goods, Learned Counsel submits that since the preamble of the Order-in-Appeal specifically required them to approach the CESTAT they have done so and the appellant cannot be penalized for the mistake, committed by the First Appellate Authority. He further argued that rebate is a form of refund and demand for recovery of erroneous refund cannot be made unless a show cause notice is issued under Section 11A of the Central Excise Act within the time limit. He relies on the following case laws:

Gillooram Gouri Shankar Vs. Commr. of C. Ex. Jamshedpur [2001 (137) ELT 330 (Tri.- Kol)]

Nestle India Ltd., Vs. Commissioner of Central Excise, Goa [2009 (240) ELT 426 (Tri.- Mum)]

Morarjee Goculdas Spg. & Wvg. Vs. Commissioner of C. Ex. Mumbai- I [2008 (222) ELT 114 (Tri. - Mum)]

Commissioner of C. Ex., Coimbatore Vs. Pricol Ltd., [2015 (320) ELT 703 (Mad.)].

3. Learned Departmental Representative reiterates the findings of the lower authorities and argues that the First Appellate Authority has given adequate opportunity to the appellant to present their case and also considered all the submissions before deciding the appeal. He further submits that in terms of the first proviso to Section 35B(1) of the Central Excise Act no appeal can lie before the Tribunal in matters involved to rebate duty of excise on goods exported outside India.

4. I have considered the arguments on both sides. Without going into the merits of the case, I find that the matter in question pertains to rebate of duty on goods exported out of India. The Tribunal has no jurisdiction to decide appeals against orders passed by the Commissioner (Appeals) in such cases in terms of the first proviso to Section 35B(1).

5. The appeal is dismissed as not maintainable.

(Operative portion of this order was pronounced in open court  
on conclusion of hearing)

**(P. VENKATA SUBBA RAO)**  
**MEMBER(TECHNICAL)**

Lakshmi...