# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH AT MUMBAI
## COURT No. I

**APPEAL No. E/03/2011**

(Arising out of Order-in-Appeal No. YDB/661/M-II/2010 dated 29.9.2010 passed by Commissioner of Central Excise (Appeals-II), Mumbai)

**Larsen & Toubro Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise, Mumbai-II** **Respondent**

Appearance:

Shri Mihir Mehta, Advocate, for appellant
Ms. Anuradha S. Parab, Assistant Commissioner (AR), for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. Sanjiv Srivastava, Member (Technical)**

Date of Hearing: 12.9.2018
Date of Decision: 12.9.2018

ORDER No. **A/87307/2018**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. YDB/661/M-II/2010 dated 29.9.2010 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. At the outset, the learned AR for the Revenue raised a preliminary objection of the maintainability and jurisdiction of this Tribunal deciding the present appeal.

She has submitted that the present issue relates to fixation of brand rate in claiming drawback. She has argued that in view of clause (c) of first proviso to Section 129A of the Customs Act, 1962, this Tribunal has no jurisdiction to decide the appeal and revision application against the order of the learned Commissioner (Appeals) is maintainable before the Government of India.

3. Learned Advocate for the appellant fairly submits that the issue relates to fixation of brand rate.

4. Since the issue relates to fixation of brand rate in claiming drawback against the order passed by the Commissioner of Central Excise (Appeals), the revision application would lie before the Government of India and this Tribunal has no jurisdiction in deciding the appeal in view of the first proviso to Section 129A of the Customs Act, 1962. Consequently, the appeal is dismissed for non-maintainable. However, the appellant is at liberty to file appropriate application before the Revisionary Authority and the time consumed in pursuing the appeal before this Tribunal be considered by the Revisionary Authority in maintaining the application.

5. Appeal is dismissed.

(Pronounced in court)

**(Sanjiv Srivastava)**
**Member (Technical)**

**(Dr. D.M. Misra)**
**Member (Judicial)**

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