

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CEA No. 13 of 2015 (O & M)
Date of Decision:- 08.04.2015

(i)

Century Knitters (India) Ltd.

.....Appellant(s)

VS.

The Customs, Excise & Service Tax Appellate Tribunal and another

.....Respondent(s)

(ii)

CEA No. 14 of 2015

Natraj Fabrics

.....Appellant(s)

VS.

The Customs, Excise & Service Tax Appellate Tribunal and another

.....Respondent(s)

(iii)

CEA No. 15 of 2015

Nimisha Knits

.....Appellant(s)

VS.

The Customs, Excise & Service Tax Appellate Tribunal and another

.....Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sudhir Malhotra, Advocate,
for the appellant.

S.J. VAZIFDAR, A.C.J. (Oral)

These appeals raise common questions arising out of the same impugned order. The appeals are filed against an order dated 02.09.2014 passed by the CESTAT holding that by virtue of an order dated 13.03.2013, the appeal stood dismissed.

The assessment orders were passed in respect of the appellant on 08.12.2011 by the Commissioner. The appellant filed appeals before the CESTAT. By the impugned order dated 13.03.2013, the CESTAT ordered as follows:-

“4. On the aforesaid facts and circumstances the appellant is directed to deposit Rs.87,44,929 within 4 weeks of receipt of this order and make compliance on 5th June, 2013. We make it clear that the aforesaid order has imposed pre-condition in respect of all the stay applications listed in Srl. Nos. 21 to 25 of the cause list. Failure to make deposit of any part of the aforesaid amount shall render this order vacated and all the appeals shall stand dismissed.”

It appears that M/s. Puneet Exports Inc., whose appeal and application were also disposed of by the said order dated 13.03.2013, filed a miscellaneous application for modification of this order which was dismissed by an order dated 26.06.2014. By this order the CESTAT directed notice to be issued to the above appellants to show cause as to why their appeals should not also be dismissed.

The appellant appeared before the CESTAT pursuant to the above order. The CESTAT, by the impugned order, rightly held that by virtue of the order dated 13.03.2013, the appeal stood dismissed.

Admittedly, the order dated 13.03.2013 was not complied with by the

appellant or by M/s. Puneet Exports Inc. It was a self operative order entailing the dismissal of the appeals in the event of the sum of ₹87,44,929/- not being deposited. The order had attained finality.

Even assuming that by the said order, the appellant herein was not directed to deposit the amount, the consequence of non-deposit was the dismissal of the appeal filed by the above appellants as well. The same has not been challenged now for two years. By the impugned order, the Tribunal rightly held that so long as the order dated 13.03.2013 is valid, the consequence of non-deposit is the dismissal of the appeal before the CESTAT.

It is, however, contended on behalf of the appellants that they were not heard when the order dated 13.03.2013 was passed. It is further contended that the order of deposit was not directed against the appellant and was directed only against M/s. Puneet Exports Inc. and that, therefore, the order could not have directed the dismissal of the appeal filed by the above appellant for non-deposit of the amount.

Even assuming that the above contention is well founded, it would require the order dated 13.03.2013 being modified or set aside. If the appellants were not heard on 13.03.2013, they were always at liberty to make an application for setting aside the order on that ground. They have not done so till date. It is important to note, however, that the Tribunal held that the appellant, if aggrieved, is at liberty to pursue appropriate remedies against an order dated 13.03.2013. The Tribunal has, therefore, expressly granted the appellant liberty to pursue the appropriate remedies against order dated 13.03.2013.

In the circumstances, the impugned order does not prejudice the

appellant in as much as the liberty as aforesaid has been granted. In the event of the appellant making an application for modifying or setting aside the order and the application being dismissed otherwise than on merits, liberty to the petitioner to file a fresh petition.

The appeal does not, therefore, raise a substantial question of law. The appeal is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

08.04.2015

shivani