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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CEAC 106/2014, C.M. Nos.21124-21126/2014**

COMMISSIONER OF CENTRAL EXCISE DELHI-I ..... Petitioner

versus

VIJAY KUMAR ARORA ..... Respondent

CEAC 107/2014, C.M. Nos.21127-21129/2014

COMMISSIONER OF CENTRAL EXCISE DELHI-I ..... Petitioner

versus

RIDER INDUSTRIES ..... Respondent

CEAC 108/2014, C.M. Nos.21130-21132/2014

COMMISSIONER OF CENTRAL EXCISE DELHI-I ..... Petitioner

versus

V. K. INDUSTRIES ..... Respondent

CEAC 109/2014, C.M. Nos.21138-21140/2014

COMMISSIONER OF CENTRAL EXCISE DELHI-I ..... Petitioner

versus

JASWANT RUBBER INDUSTRIES ..... Respondent

Present: Mr. Kamal Nijhawan, Sr. Standing Counsel for Revenue with Mr. Sumit Gaur, Advocate for Revenue in all cases.
Mr. V.K. Gupta, Advocate for respondent in CEAC 106/2014.
Mr. Naveen Mullick with Ms. Aanchal Mullick and Mr. Parth Mullick, Advocates for respondents in CEAC107-109/2014.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **28.01.2015**

C.M. Nos.21124 & 21126/2014 IN CEAC 106/2014
C.M. Nos.21127 & 21129/2014 IN CEAC 107/2014
C.M. Nos.21130 & 21132/2014 IN CEAC 108/2014

C.M. Nos.21138 & 21140/2014 IN CEAC 109/2014

Delay in filing and re-filing the appeals are condoned, subject to all just exceptions.

C.M. No.21125/2014 IN CEAC 106/2014 (exemption)
C.M. No.21128/2014 IN CEAC 107/2014 (exemption)
C.M. No.21131/2014 IN CEAC 108/2014 (exemption)
C.M. No.21139/2014 IN CEAC 109/2014 (exemption)

Allowed, subject to all just exceptions.

CEAC 106-109/2014

1. It is pointed by counsel for the respondents that the present appeals under Section 35G of the Central Excise Act are not maintainable. Learned counsel relies upon the decision of the Supreme Court reported as *Navin Chemicals Mfg. & Trading Co. Ltd. v. Collector of Customs*, 1993 (68) ELT 3 (SC) where it was stated that: -

> *"11. It will be seen that Sub-section 5 uses the said expression 'determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to Sub-section 5 of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have,*

given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT : does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate of duty applicable to the goods or to the value of the goods."

2. Learned counsel also relies upon the subsequent judgment of this Court in *Commissioner of Service Tax v. Ernst & Young Pvt. Ltd.*, 2014 (34) STR 3(Del) wherein another Division Bench held as follows: -

9. Before we examine other judgments, it is important to examine the language of Section 35G in the bracketed portion which relates to matters in which appeal is to be filed before the Supreme Court. Section 35L of the F. Act is specific. The words/expression used is "determination of any question in relation to rate of duty or value for the purpose of assessment". The word 'any' and expression 'in relation to' gives appropriately wide and broad expanse to the appellate jurisdiction of the Supreme Court in respect of question *relating to rate of tax or value for the purpose of assessment. Further, if the order relates to several issues or questions but when one of the questions raised relates to "rate of tax" or valuation in the order in the original, the appeal is maintainable before the Supreme Court and no appeal lies before the High Court under Section 35G of the CE Act. Referring to the expression "other things" in Section 35G of the CE Act in the case of Bharti Airtel Limited 2013 (30) S.T.R. 451 (Del.), a Division Bench of this Court has stated:*

> *3. On a plain reading of Section 35G of the Central Excise Act, 1944 it is clear that no appeal would lie to the High Court from an order passed by CESTAT if such an order relates to, among other things, the determination of any question having a relation to the rate of duty or to the valuation of the taxable service. It has nothing to do with the issues sought to be raised in the appeal but it has everything to do with the nature of the order passed by the CESTAT. It may be very well for the appellant to say that it is only raising an issue pertaining to limitation but the provision does not speak about the issues raised in the appeal, on the other hand, it speaks about the nature of the order passed by the Tribunal. If the order passed by the Tribunal which is impugned before the High Court relates to the determination of value of the taxable service, then an appeal from such an order would not lie to the High Court.*
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> *4. However, we feel that although those decisions do support the contention of the learned counsel for the respondent, the approach that we have taken is a more direct. We reiterate, it is not the content of the appeal that is determinative of whether the appeal would be maintainable before the High Court or not but rather the nature of the order which is impugned in the appeal which determines the issue."*

3. This Court notices that in *Ernst & Young*, the issue involved

inter alia concerns the classification and also the power to invoke the extended period for the purpose of completing assessment.

4. In the present case too, the Revenue alleges in its appeals that the CESTAT fell into error in curtailing the period of limitation and not allowing the extended period under Section 11A of the Central Excise Act in the given facts of the case. It is also urged that clubbing of clearances which resulted in unjustified exemption is appealable to this Court under Section 35G.

5. Section 35G as it stands clearly excludes the "High Court's scrutiny in regard to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purpose of assessment". That scrutiny is exclusively left to the Supreme Court in its appellate jurisdiction under Section 35L (b) of the Act.

6. In view of the above position, this Court is of the opinion that the present appeals are not maintainable. The Revenue is, however, at liberty to seek appropriate recourse to law. The appeals are accordingly dismissed.

7. Order dasti.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

JANUARY 28, 2015
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