IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 44 of 2012 (O&M)

Date of Decision: 17.08.2016

Commissioner of Central Excise

.......Appellant

Versus

M/s Abhishek Industries Limited

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Tajender K. Joshi, Advocate
for the appellant.

Mr. Amar Pratap Singh and
Mr. Amrinder Singh, Advocates
for the respondent.

RAJESH BINDAL,J.

The revenue has filed the present appeal against the order dated 10.2.2012 passed in Excise Appeal No. 3313-3316 of 2010, by the Customs, Excise & Service Tax Appellate Tribunal (for short 'the Tribunal') raising the following substantial questions of law:

(i) Whether in the facts and the circumstances of the case, wherein refund sought under Rule 5 of the Cenvat Credit Rules, 2004 is deniable to the party, as for the export of wholly exempted goods, execution of bond/LUT is neither required nor legally acceptable, the CESTAT is correct in rejecting the appeals of the department?

(ii) Whether the order of the Hon'ble CESTAT merits to be set aside?

The issue raised is regarding claim of input tax credit by the assessee. The goods manufactured were not leviable to any tax as exported out of the country. Though the adjudicating authority declined the claim of the assessee, however, the First Appellate Authority accepted it. The department aggrieved against the order passed by the First Appellate Authority had preferred appeal before the Tribunal.

The Tribunal, while referring to the judgments of Bombay High Court in Repro India Ltd. Vs. Union of India, 2009 (235) E.LT. 614 (Bom) and Himachal Pradesh High Court in Commissioner of Central Excise Vs. Drish Shoes Ltd. 2010 (254) E.L.T. 417 (H.P) dismissed the appeals filed by the Department.

Learned counsel for the revenue fairly did not dispute the fact that against the judgment of Himachal Pradesh High Court in **Drish Shoes Ltd's Case (supra),** the State preferred appeal before Hon'ble the Supreme Court, which was dismissed on July 12, 2016, by passing the following order:

> "We find that the issue raised in this appeal is squarely covered by the judgment of the High Court of Judicature at Bombay in 'Union of India Vs. Sharp Menthol India Ltd.' (2011 (270) ELT 212) which has been approved by this Corut vide orders dated 04.04.2012.
>
> The instant appeal is, accordingly, dismissed."

A perusal of the aforesaid order shows that the earlier judgment of Bombay High Court in Sharp Menthol India Ltd, case (supra), was mentioned, which had been upheld by Hon'ble the Supreme Court involving identical issue.

Once the issue involved in the present appeal has already been gone into by Hon'ble the Supreme Court and judgments of Bombay High Court and Himachal Pradesh High Court, have been upheld granting relief to the assessee, we do not find that any substantial question of law arises in the present appeal.

The same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

17.08.2016
reema

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No