

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

**CEA No.30 of 2016 (O&M)
Date of Decision: 20.09.2016**

Commissioner, Central Excise, Faridabad-IAppellant

Versus

M/s Shivalik Global Ltd.Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Sharan Sethi, Advocate for the appellant.

RAJESH BINDAL, J

The revenue is in appeal before this Court raising the following substantial questions of law arising out of the order dated 16.01.2015 (Annexure A-3) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal"):-

"i) Whether the Tribunal is correct in holding that the Exemption under Notification No.14/2002-CE dated 01-03-2002 (under SI No.4) read with condition 5 and Explanation to it, is admissible to the Respondent?

ii) Whether the conditions attached to the Notification No.14/2002 ibid provide that the benefit under the same can be availed in relation to the products, which are subject to accrual payment of duty and not otherwise?

iii) *Whether the scope of the Explanation-II to the said Notification and the legal fiction created there under includes the Textile Yarn and Fabrics subject to Nil rate of duty or not to subject to the payment of duty?*

iv) *Whether the Tribunal is correct to apply the Case law of CCE, Ludhiana vs. Prem Industries without distinguishing the present case from the facts of the said case?"*

At the very outset, learned counsel for the appellant submitted that the Tribunal in the present case relied upon its earlier order passed by a Larger Bench in the case of **Arvind Products Ltd. Vs. CCE & ST, Ahmedabad reported in 2014 (310) E.L.T. 515 (Tribunal-LB)**, which was challenged by the Department before the Gujarat High Court. Vide order dated 04.11.2015, passed in the case of **Commissioner of Central Excise Vs. Shanti Processors Ltd., 2016(331) E.L.T. 234 (Guj.)**, the appeal was held to be not maintainable as the issue was regarding determination of the rate of duty for the purpose of assessment. Accordingly, the appeal was disposed of leaving it open for the appellant therein to avail of its appropriate remedy before the appropriate forum.

Considering the order passed by the Gujarat High Court in Shanti Processors Ltd.'s case (supra), finding that the issue involved in the present appeal is same, the appeal being not maintainable before this Court under Section 35L of the Central

Excise Act, 1944, the same is dismissed as not maintainable, however, with liberty to the appellant to avail of its appropriate remedy before the appropriate forum.

[RAJESH BINDAL]
JUDGE

20.09.2016
Vinay

[DARSHAN SINGH]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No