

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CENTRAL EXCISE APPEAL NO. 79 OF 2015

The Commissioner, Central	}	
Excise and Service Tax,	}	
Kolhapur	}	Appellant
versus		
M/s. R. M. Mohite Textile	}	
Ltd. and Ors.	}	Respondents

**WITH
CENTRAL EXCISE APPEAL NO. 89 OF 2015**

The Commissioner, Central	}	
Excise and Service Tax,	}	
Kolhapur	}	Appellant
versus		
M/s. Deendayal	}	
Magasawargiya Sahakari	}	
Soot Girni Ltd. and Ors.	}	Respondents

Mr. Pradeep S. Jetly with Mr. Jitendra B.
Mishra for the appellant.

Mr. M. H. Patil for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- MARCH 20, 2017

P.C. :-

1 At the hearing of these two appeals, a preliminary objection was raised by Mr. Patil about the maintainability of these appeals. He relies upon the wording of sub-section (1) of section 35-L of the Central Excise Act, 1944. He would submit that the appeals

to this court are against an order passed by the tribunal under section 35-G of the Central Excise Act, 1944. He would submit that if the impugned order dated 3rd July, 2014 is read in the backdrop of the show cause notice and the demand raised therein, then, this is not an order falling within the purview of this court's appellate powers. Rather, it pertains to the determination of any question having relation to the rate of duty of excise. Therefore, in terms of sub-section (1) of section 35-L of the Central Excise Act, 1944, an appeal against this order would lie to the Hon'ble Supreme Court of India.

2 For consideration of this preliminary objection, with the assistance of both counsel, we have perused the show cause-cum-demand notice. The show cause-cum-demand notice proceeds on the footing that there is a 100% export oriented unit. That is manufacturing excisable goods. However, it avails relaxation to sell goods in domestic tariff area as envisaged under Chapter 9 or Chapter 6 of the Exim Policy 1997-2002 or 2002-2007. The sale of cotton yarn and cotton waste in domestic tariff area was made and yet the appellant before the tribunal was availing benefit of concessional rate of CENVAT duty leviable under section 3(1) of the Central Excise Act, 1944 read with the provisions of paragraphs 9.9(b) and 9.20 or 6.8(b) and 6.8(d) of the relevant

Exim Policies. The show cause notice alleges that in the year 1999, the Exim Policy has been amended to provide for domestic tariff area sale upto 50% of the FOB value of exports to be made on applicable duties. Therefore, within the limits of 50% of FOB value of exports as prescribed by the Development Commissioner, SEEPZ, Mumbai and for any clearances exceeding this limit, the full duty was required to be paid under proviso to section 3(1) of the Central Excise Act, 1944. Thus, the allegation is that without complying with the condition of permission by the Development Commissioner, this sale has been effected and consequently, there is no compliance with the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944. The differential duty payable is based on this computation.

3 It is upon such a controversy that the order-in-original was passed confirming this show cause notice. It may be that in the appeal, the tribunal dealt with only one of the submissions canvassed on behalf of the appellant before it. However, the appellant assessee may have succeeded on that, but we have to consider the essential issue or the underlying controversy. The underlying controversy clearly points towards a provision, which is attracted. We have seen that this is an issue squarely falling within the wording, namely, “to the determination of any question

having relation to the rate of duty of excise”. These words in clause (b) of sub-section (1) of section 35-L are of widest amplitude. They cannot be ignored to accept the argument of Mr.Jetly on the maintainability of these appeals and namely that the tribunal having decided only a limited issue these appeals are maintainable. We do not think that such bifurcation and of the clear wording of wider amplitude is permissible. Hence, by upholding the preliminary objection, we dismiss the appeals. These appeals are clearly not maintainable before this court. Ordered accordingly.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)