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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 99 OF 2015**

**The Commissioner of Central Excise-
Thane - II**

4th Floor, Navprabhat Chambers, Ranade
Road, Dadar (W), Mumbai 400 028.

...Appellant

Versus

M/s. K.K. Chempro (India) Pvt. Ltd.

8(B)(1), GAVL Society Ltd., Survey No.
198, Hissa No. 5/1 Part, Goraipada,
Vasai(E), Thane – 401 209.

...Respondent

Mr. Mangalambhar Dwivedi, with Mr. Sham V. Walve, for
Appellant.

Mr. Prakash Shah, with Mr. Prasad Paranjape i/b PDS Legal
for the Respondent.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.
DATED: 7th August 2017**

ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)

1. The Appellant has filed the present Appeal challenging the order of the Customs, Excise and Service Tax Appellate Tribunal, East Zone Bench at Mumbai (“**CESTAT**”) dated 5th August 2014 by which Judicial Member of CESTAT has held

that the Tribunal had jurisdiction to entertain the Appeal against the order of Commissioner (Appeals), wherein the issue of "Duty Drawback" had been determined by the learned Commissioner (Appeals).

2. Facts briefly stated are that the Respondent had filed 15 applications for determination of the rate of drawback under Rule 6(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 ("**the said Rules**") in respect of goods, viz. Silicon Fluid R-335 exported by them. The Deputy Commissioner vide orders in original held that the applications of the Respondent are not maintainable for the reason that the industry rate of drawback had already been fixed in respect of goods which are squarely covered under heading 391002 of Drawback Schedule. The Respondent being aggrieved by the orders in original filed an Appeal before the Commissioner (Appeals) on the ground that neither the deficiency memo nor any personal hearing was given to the Respondent to defend its case and that the rate of drawback applied for was proper and correct. The Commissioner (Appeals) vide order in Appeal dated 29th April

2014 rejected the Appeals filed by the Respondent. The Respondent being aggrieved by the order had filed an Appeal before CESTAT. CESTAT by an order dated 5th August 2014 remanded the matter back to the adjudicating authority to consider the applications for drawback filed by the Respondent under Rule 7 instead of Rule 6 of the said Rules. The Appeal herein has challenged the impugned order of CESTAT dated 5th August 2014 and has raised substantial questions of law in paragraph 4 of the Appeal which reads thus:-

In the aforesaid premises state above, the Appellant herein humbly submits that the following substantial question of law arises / the present appeal of great public importance for determination of this Hon'ble Court:

a) Whether in the facts and circumstances of the case and in law the CESTAT, Mumbai is correct in passing an order without jurisdiction?

b) Whether in the facts and circumstances of the case and in law CESTAT, Mumbai is correct in making an observation that there is no bar on entertaining appeal against the order of the Commissioner (Appeals), despite the clause (b) to sub-section (1) of Section 35B of the Central Excise Act, 1944?

c) Whether in the facts and circumstances of the case and in law the CESTAT, Mumbai is correct in remanding the case back to the adjudicating authority, by giving directions to consider the applications under Rule 7 instead of Rule 6 of the said Rules, as filed as filed by the assessee?

3. Mr. Mangalambhar, learned counsel for the Appellant has contended that “drawback” has been defined in Rule 2 as follows:-

“drawback” in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods”.

Mr. Mangalambhar has contended that from the definition of “drawback” it is apparent that “drawback” is equated with “rebate” of duty. The first proviso to Section 35 B (i) of the Central Excise Act, 1944 (“**the Act**”), provides that no Appeal shall lie, if such order relates to:

“a rebate of duty of excise of goods exported to any country or territory outside India or on excisable materials used in the manufacture of

goods which are exported to any country or territory outside the India”.

4. Mr. Mangalambhar has, therefore, contended that the impugned order is without jurisdiction as CESTAT has considered an Appeal from the order of the Commissioner, wherein the issue of rate of drawback had been determined. Mr. Mangalambhar has accordingly submitted that the present Appeal be allowed and the impugned order be set aside.

5. Mr. Prakash Shah, learned Counsel for the Respondent has supported the impugned judgement and has contended that an appeal will lie to CESTAT from an order of the Commissioner (Appeals) relating to “drawback”.

6. Having heard the arguments, we observe that under the Central Excise Rules, 2002, “Rebate of Duty” has been specifically provided for in Rule 18 which reads thus:-

Rule 18, Rebate of duty. – Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials

used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitation, if any, and fulfilment of such procedure, as may be specified in the notification.

7. We are of the considered view that since “Rebate of duty” is separately provided for it cannot be equated with “drawback” under Rule 2 of the said Rules. We are of the view that there is no bar in entertaining an Appeal against the order of Commissioner (Appeals), determining the duty drawback. We are of the view that there is no infirmity in the impugned order of CESTAT.

8. The Appeal is dismissed on the finding that CESTAT has properly exercised jurisdiction. There shall be order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)