IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Central Excise Appeal No.29 of 2014
(The Commissioner of Central Excise, Customs & Service Tax, Kendriya Utpad Shulk Bhavan, Telangkhedi Road, Nagpur -vs.- M/s. Ispat Industries Ltd, A-10/1, MIDC Industrial Area, Kalmeshwar, Nagpur & 1 another).

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr. S.N. Bhattad & K.K. Nalamwar, Advocates for Appellant.
Mr. S.N. Kumar & Ms. Priyanka Verma, Advocates for Respondents.

CORAM : M.S.SANKLECHA &
MANISH PITALE, JJ.

DATE : 01.08.2017.

This appeal under Section 35G(1) of the Central Excise Act, 1944 (the Act) challenges the order dated 16th April, 2004 passed by the Customs, Excise & Service Tax Appellate Tribunal (Tribunal).

2. This appeal was admitted on 23rd January, 2015 on the following substantial question of law:-

> "*Whether amendment introduced to Rule 6(6)(i) of the Cenvat Credit Rules, 2004 under Notification No.50/2008-CE(N.T.) dated 31.12.2008 will have any retrospective effect and whether the Respondent is required to pay duty for the clearances effected to S.E.Z. Developers in as much the Developer were included only on 31.12.2008 by the said amendment?*"

3. Mr. S.N. Kumar, learned counsel for the assessee, at the very outset raises a preliminary objection to the jurisdiction of this Court to entertain this appeal. It is pointed out that the above question relates to rate of duty of excise payable on goods cleared to developer of special economic zone prior to 31st December, 2008. Therefore, in terms of Section 35L of the Act as the issue arising in this appeal relates to rate of duty, the appellant/Revenue should file an appeal to the Supreme Court.

4. On 3rd July, 2009 the Joint Commissioner of Central Excise had issued notice to the assessee seeking to recover an amount of Rs.24.26 Lacs being 10% of Rs.2.42 Crores, being the value of finishing goods cleared to the developer of SEZ during the period June 2008 to November 2008. The basis of demand was Rule 6(3) of the Cenvat Credit Rules, 2004 which required an assessee who had availed of Cenvat Credit on inputs utilised in exempted goods to pay 10% amount on the clearance of exempted goods. The respondent/assessee has resisted the show cause notice. However, the Additional Commissioner of Central Excise by order dated 28th October, 2009 confirmed the show cause notice

demanding an amount of Rs.24.26 Lacs in terms of Rule 6(3) r/w Rule 14 of the Cenvat Credit Rules, 2004 r/w Section 11 of the Act.

5. Being aggrieved, respondent/assessee carried the issue to the Commissioner (Appeals), Customs & Central Excise, Nagpur. The respondent/assessee contended that in view of the amendment made to Rule 6(6)(i) of Cenvat Credit Rules, 2004 by Notification No.50/2008-Central Excise (N.T.) dated 31st December, 2008, Rule 6(3) of Cenvat Credit Rules, 2004 will not apply. The above amendment excluded the application of Rule 6(3) of the Cenvat Credit Rules, 2004 to clearances to a developer of a special economic zone for their authorized operations. This amendment, it was contended would have retrospective operation. However, it was not accepted and by an order dated 1st February, 2010 the Commissioner (Appeals) of Customs & Central Excise dismissed the respondent/assessee's appeal upholding the order of the Additional Commissioner of Central Excise dated 28th October, 2009.

6. Being aggrieved, the respondent/assessee filed a further appeal to the Tribunal. By the impugned

order dated 16th April, 2014, the Tribunal held that in view of the amendment made by substitution on 31st December, 2008, to Rule 6(6)(i) of the Cenvat Credit Rules, 2004 the clearances of goods to S.E.Z. developers even before 31st December, 2008 would be exempted goods, not hit by Rule 6(3) of the Cenvat Credit Rules, 2004.

7. The Revenue being aggrieved is in appeal before us. We note that the basic issue arising in the substantial question of law as formulated to be decided is whether the clearance to S.E.Z. developers during the period June, 2008 to November, 2008 would be exempted goods in view of Rule 6(6)(i) of the Cenvat Credit Rules, 2004 which substituted the earlier provision on 31st December, 2008, even to clearances prior to 31st December, 2008. Thus, excluding the application of Rule 6(3) of the Cenvat Credit Rule, 2004.

8. Thus, the question arising is essentially a question relating to duty of an excise on the goods cleared to developer of S.E.Z. prior to 31st December, 2008 i.e. exempted or not under Rule 6(6)(i) of the Cenvat Credit Rules. Therefore, we would have no jurisdiction to

entertain the present appeal in view of Section 35L of the Act. Therefore, the substantial question as formulated is not being answered for want of jurisdiction.

9. Accordingly appeal is dismissed. No order as to costs.

JUDGE **JUDGE**

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