IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No.39 of 2016 (O&M)
Date of Decision: 24.07.2018

Commissioner Central Excise & Service Tax, Commissionerate, Sonepat

...... Appellant

versus

M/s Packotech Industries, Sonepat

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. J. S. Bhatia, Advocate
for the respondent.

RAJESH BINDAL J.

This is an appeal against the order dated 23.10.2015 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for short 'the Tribunal') against the order passed in Excise Appeal No.E/3186/2012-EX(DB) titled as 'M/s Packotech Industries vs. CCE, Rohtak' raising the following substantial questions of law:-

i) Whether Tribunal was correct to hold that the activity of metallisation and lamination of the Polyster Film prior to 01.03.2008 amounts to manufacture, contrary to the statutory provisions of the Central Excise, Tariff Act, 1985?

ii) Whether the Tribunal was justified to hold the Respondent to pay Central Excise duty which otherwise was not due and to pass on the Cenvat Credit to their Buyers, in terms of Cenvat Rules, 2004?

iii) Whether the Tribunal was justified that the Respondent can claim discharge of reversal of irregularly availed Cenvat Credit on account of the Duty paid on clearance of non-excisable items without following Cenvat Rules, 2004?

iv) Whether the Tribunal was justified not to consider the mandatory provisions of Rule 4(i) of Cenvat Credit Rules with Section-5 (I-A) of the Central Excise Act, 1944 where the Respondent is not entitled to avail Cenvat Credit and payment of Central Excise Duty on Exempted Goods?

At the very outset, learned counsel for the assessee while referring to the order passed by this Court in CEA No.52 of 2016 titled as 'Principal Commissioner of Central Excise and Service Tax, Ludhiana vs. M/s Namdhari Industrial Traders', decided on 29.08.2017 submitted that as the issue in the present case is as to whether the activity of the respondent can be termed as manufacturing, on which excise duty is leviable, the present appeal before this Court is not competent.

Learned counsel for the revenue could not dispute that the issue involved in M/s Namdhari Industrial Trader's case (supra) was similar, and the same has been dismissed as not maintainable.

For the reasons stated in the aforesaid order, the present appeal is dismissed as not maintainable before this Court, however, with liberty to the revenue to avail of its appropriate remedy in accordance with law.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

24.07.2018
rittu

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No