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

**CEA No.70 of 2017 (O&M)
Date of decision : 26.07.2018**

Principal Commissioner of Central Excise & Service Tax, Jalandhar

... Apellant

Versus

M/s Jagatjit Industries Ltd.

... Respondent

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

Present: Mr. Tajender K. Joshi, Senior Standing Counsel, for the appellant.

Mr. Kishore Kunal, Advocate for the respondent.

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RAJESH BINDAL, J.

The appellant-revenue has filed the present appeal arising out of order dated 04.08.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh (in short 'CESTAT') in Appeal No.ST/1304/2010, raising the following substantial questions of law:-

i) Whether the Hon'ble CESTAT is right in holding that the impugned order lacks jurisdiction to decide the case afresh when the CBEC's Cricular dated 27.10.2008 dealt with the IPR service which was made applicable w.e.f. 10.09.2004 whereas the case pertained to the period 2001-02 to 2003-04?

ii) Whether the Hon'ble CESTAT is right in holding that the impugned order travelled beyond the scope of the show cause notice when the charges in the show cause notice were clearly made out against the Respondent in view of citations quoted above?.

At the very outset, learned counsel for the respondent-assessee raised a preliminary objection regarding maintainability of the present appeal submitting that issue of classification is involved therein, as the turn over was sought to be taxed either under the Head of Management Consultancy Services or Franchise Services or Intellectual Property Services. Appeal raising issue of classification of goods is not maintainable before this Court in terms of Section 35 G(1) read with Section 35(L)(ii) of the Central Excise Act.

Learned counsel for the appellant-revenue did not dispute the fact that issue regarding turn over of the respondent-assessee being either of the services as referred to above requires determination in the present appeal.

Keeping in view the fact that issue regarding classification of goods for taxability is involved in the present appeal, the same is not maintainable before this Court, hence, the appeal is dismissed with liberty to the appellant-revenue to avail of its appropriate remedy against the order impugned, in accordance with law.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

26.07.2018
Yogesh Sharma

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**