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

STA No. 6 of 2017 (O&M)

Date of decision: 30.7.2018

Commissioner Service Tax, Delhi-IV .. Appellant

vs

M/s Denso Haryana Private Limited .. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal

Present Mr. Sourabh Goel, Advocate, for the appellant.

Mr. Amrinder Singh, Advocate, for the respondent.

Rajesh Bindal, J.

This is an appeal against the order dated 16.10.2015 passed by the Customs, Excise & Services Tax Appellate Tribunal, Principal Bench, New Delhi (for short 'the Tribunal') passed in Appeal No. ST/880/2011.

At the very outset, learned counsel for the respondent submitted that while deciding the issue the Tribunal placed reliance upon orders passed in *Modi-Mundipharma Private Limited vs CCE, Meerut* 2009 (15) STR 713 (Tri. Del) and *Petronet LNG Limited vs CST, New Delhi* 2013-TIOL-1700-CESTAT-DEL. Against those orders, the department had filed appeal before Hon'ble the Supreme Court as the issue regarding taxability is in question. In the present appeal as well, the assessee is disputing its liability to pay tax on the transactions. Hence, the present appeal is not maintainable. In support, reliance was placed upon earlier order passed by this court in STA No. 24 of 2016 – *Commissioner Service Tax vs DLF Golf Resorts Limited,* decided on 3.5.2017, where similar issue was involved and appeal was held to be not maintainable.

Keeping in view the aforesaid facts and Section 35L(2) of the Central Excise Act, 1944, which clearly provides that determination of any question having relation with the rate of duty shall include determination of taxability of goods for the purpose of assessment, for decision of which exclusive jurisdiction is with Hon'ble the Supreme Court, we dismiss the appeal as not maintainable, however, giving liberty to the appellant to avail of its appropriate remedy against the order passed.

Ordered accordingly. Accordingly, the application for condonation of delay in filing the appeal is also dismissed.

(Rajesh Bindal)
Judge

30.7.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No