IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CEA 48/2018 (O&M)
Date of decision:05.07.2019

Commissioner of Central Excise and Service Tax Commissionerate, Ludhiana,now (Commissioner of Goods & Service Tax,Ludhiana)

.............Appellant

v.

M/s Komal Impex and Industries

.............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Mr.Sourabh Goel,Sr.Standing Counsel for Indirect Taxes with Mr.Sanjeeva K.Uppal,Advocate for the appellant.

Jaswant Singh,J,(Oral).

CM 26310-CII/2018 has been filed seeking condonation of delay of 32 days in refiling the appeal.

For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

CM 26311-CII/2018 has been filed seeking condonation of delay of 1 day in filing the appeal.

The delay being insignificant, application is allowed and delay of 1 day in filing the appeal is condoned.

Main case.

This order shall dispose of three* Central Excise Appeals, as detailed below in the footnote of this order, as identical facts are involved therein. However, facts are being noticed from CEA 48/2018.

Revenue is in appeal against the order dated 13.12.2017 (A-3) passed by Customs,Excise and Service Tax Appellate Tribunal,Chandigarh Bench whereby appeal filed by the Revenue was dismissed and appeals filed by Assessees were disposed of.

Briefly noticed, assessees-M/s Komal Impex and Industries are engaged in the manufacture of knitted readymade garments by processing the yarn in circulating machines. On the basis of specific information its premises were visited on 17.6.2004 by Headquarter Preventive Officers,Ludhiana. On verification of records pertaining to raw material(cotton) and finished goods(T-Shirts), as also physical verification of the goods on 17.6.2014 it was found that assessee had clandestinely manufactured and cleared garments(T Shirts) to the tune of 895263 pieces in the open market without discharge of appropriate central excise duty. Accordingly, a show cause notice dated 11.4.2008 was served on the assessee. The Adjudicating Commissioner, vide Order-in-Original dated 25.6.2009 (A-2) confirmed the demand of Rs.36,51,240/- from the assessee as Excise Duty and interest under Section 11-AB of the Central Excise Act,1944 and vacated rest of the demand. It also imposed penalty of Rs.5 lacs and Rs.2 lacs on Subir Goyal and Sanjeev Goyal-partners respectively of assessee firm. Aggrieved against the said order appellant-Revenue as well as assessees all filed appeals before CESTAT,Chandigarh Bench and learned Tribunal vide impugned order dated 13.12.2017 (A-3) dismissed the appeal filed by Revenue and allowed the appeal filed by assessees. Hence the present appeals.

In the present appeal, the following substantial questions of law have been raised:-

> *(A) Whether the impugned final order dated 13.12.2017, Annexure A-3, passed by Ld.CESTAT is perverse, non-speaking and unreasoned and therefore the same is liable to be set-aside in the interest of justice?*
>
> *(B) Whether the Ld.Tribunal committed a grave error in ignoring the statement of the partner of respondent no.1 vide which it was admitted that the firm was involved in clandestine removal of goods?*
>
> *(C) Whether the Ld. Tribunal committed a grave error in ignoring evidence (admission of the partner) and therefore the impugned order dated 13.12.2017 is perverse, arbitrary and illegal and is liable to be set aside?*
>
> *(D)Whether the Ld.Tribunal committeed an error in relying upon the order passed in the case of Devender Sandhu Impex Limited v CCE,Ludhiana-2016(337)ELT 99 (Tri.Del.)when the department has already filed CEA 4/2016 against the said order and the same is pending before this Hon'ble Court.*

At the time of hearing,learned counsel for the appellant admits that in view of instructions dated 11.7.2018 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal is not maintainable before this Court, the monetary limit being below Rs.50,00,000/-.

In view of the said instructions dated 11.7.2018 learned counsel for the appellant prays for withdrawal of the instant appeal, however, the question of law raised would remain open.

Dismissed as withdrawn.

(Jaswant Singh)
Judge

05.07.2019. **(Lalit Batra)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**

***1. CEA 48/2018 [Commissioner of Central Excise and Service Tax,Ludhiana, now (Commissioner of Goods and Service Tax,Ludhiana) v M/s Komal Impex & Industries.]**

2. CEA 3051/2018 [Commissioner of Central Excise and Service Tax Commissionerate,Ludhiana,now (Commissioner of Goods and Service Tax,Ludhiana) v Sanjiv Goyal ,Partner, M/s Komal Impex and Industries].

3.CEA 8057/2018 [Commissioner of Central Excise and Service Tax Commissionerate,Ludhiana,now (Commissioner of Goods and Service Tax,Ludhiana) v Subir Goyal,Partner,M/s Komal Impex and Industries].