

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CEA 18/2019 (O&M)  
Date of decision:09.09.2019

Commissioner of Central Goods and Service Tax

.....Appellant

v.

Sh.Davinder Singh

.....Respondent

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

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

**Jaswant Singh,J,**

Since there is delay of 344 days in refiling the instant appeal, application under Section 5 of the Limitation Act has been filed seeking condonation of said delay.

Another application seeking condonation of delay of 79 days in filing the appeal has also been filed.

**Main case.**

Davinder Singh-respondent is partner of M/s Davinder Export, situated at Ludhiana. The said partnership firm engaged in the manufacture of knitted cloth and knitted garments of cotton and cotton polyester is registered with the Central Excise Department. On the basis of investigation, it was alleged that the said firm had

clandestinely cleared mufflers and T-Shirts worth Rs.10,46,49,280/- without accounting for the same in its records and without payment of Central Excise Duty to the tune of Rs.1,04,99,247/-. Accordingly, it was issued show cause notice. The Adjudicating Authority vide order dated 23.10.2006 confirmed the demand out of which an amount of Rs.54,45,800/-, debited by the noticee on 21.5.2004 against said demand, was appropriated. Penalty and interest were also imposed. Aggrieved against the same, respondent filed an appeal before CESTAT. The Tribunal vide order dated 19.1.2017 allowed the appeal with consequential relief. Hence the present appeal in which following substantial questions of law have been raised:-

- i) Whether the impugned order dated 19.01.2017 passed by the Tribunal can be said to be an order made in accordance with law when it has ignored the admissions of clandestine removal of goods without bills, made by the director of the respondent company?*
- ii) Whether the impugned judgment of the Hon'ble CESTAT is sustainable in the eyes of law?.*

At the time of hearing, learned counsel for the appellant admits that in view of instructions dated 22.8.2019 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal would not be maintainable before this Court, as demand amount i.e. Rs.50,53,000/- approximately is to be recovered, which is below the monetary limit of Rs. 1 Crore.

In view of the said instructions dated 22.8.2019 learned counsel for the appellant prays for withdrawal of the instant appeal,

however the questions of law raised would remain open.

Dismissed as withdrawn with liberty aforesaid.

Since the main appeal has been dismissed as withdrawn, no orders are being passed on the applications seeking condonation of delay.

**(Jaswant Singh)  
Judge**

**09.09.2019.**  
joshi

**(Lalit Batra)  
Judge**

<b>Whether Speaking/reasoned</b>	<b>Yes/No</b>
<b>Whether Reportable</b>	<b>Yes/No</b>