

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

CEA No. 65 OF 2015(O&M)

Date of decision: 16.12.2016

Commissioner of Central Excise, Chandigarh -1 .. Appellant

vs.

M/s Nova Industries (P) Ltd.

.. Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

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

Mr. Jagmohan Bansal, Advocate
for the respondent.

Rajesh Bindal, J.

This order shall dispose of CEA Nos. 65,59, 67 and 68 of 2015.

The facts are noticed from CEA No. 65 of 2015.

The appeal has been preferred against the order dated 30.03.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. E/394/2007 raising in the following substantial questions of law:-

“(i) Whether the Hon'ble Tribunal is correct in allowing the appeal of the party with consequential relief, by holding the demand on account of wrong availment of SSI exemption and Clandestine removal by both the units, as not sustainable, without going into the merit of the case by not taking the cognizance of corroborative evidences found during search of the units and the residential premises of their employees and during follow-up investigation of the case.

(ii) Whether the Hon'ble Tribunal is correct in holding that extended period of limitation is not invocable even when the party had indulged into fraud, willfully suppressed/mis-declared the material facts and also resorted to manufacturing and clearing goods without payment of duty with the help of their employees who had been quite active in execution of their modus-operandi as discussed above, as per the directions of their Managing Director.

(iii) Whether the impugned order passed by the Id. Tribunal is justified and in accordance with law.

At the very outset, learned counsel for the respondent raised a preliminary objection referring to the judgment of this Court in **Commissioner of Central Excise, Panchkula vs. Special Machine 2009 (242) ELT 330 (P&H)** that the issue involved in the aforesaid appeals being rate of duty, the appeals before this Court are not maintainable, in view of Section 35G of the Central Excise Act, 1944.

Learned counsel for the appellant could not dispute the aforesaid factual position with reference to the judgment of this Court in **Special Machine's case (supra)**.

As the issue involved in the present appeals is pertaining to the rate of duty with reference to exemption under notification No. 1/93-CE dated 28.02.1993, we find that the present appeals are not maintainable before this Court.

Consequently, all appeals as well as the applications for condonation of delay in filing the appeals are dismissed. However, with liberty to the appellant to avail of its appropriate remedy, in accordance with law.

(Rajesh Bindal)
Judge

16.12.2016
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No