

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

**CEA No. 67 of 2014
Date of Decision:- 15.07.2015**

Commissioner, Central Excise Commissionerate, RohtakAppellant(s)

vs.

M/s. Elegant Enterprises, SonapatRespondent(s)

**CEA No. 68 of 2014
Date of Decision:- 15.07.2015**

Commissioner, Central Excise Commissionerate, RohtakAppellant(s)

vs.

M/s. Jindal Alloys, HissarRespondent(s)

**CEA No. 69 of 2014
Date of Decision:- 15.07.2015**

Commissioner, Central Excise Commissionerate, RohtakAppellant(s)

vs.

M/s. Vishal Metal CastingsRespondent(s)

AND

**CEA No. 71 of 2014
Date of Decision:- 15.07.2015**

Commissioner, Central Excise Commissionerate, RohtakAppellant(s)

vs.

M/s. Jindal Electro Casting, HissarRespondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sukhdev Sharma, Advocate,
for the appellant.

Mr. Abhishek Jaju, Advocate,
for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

We are informed that the appeals are against a common order and are identical in all respects. We, therefore, dispose of all the appeals by this common order and judgment.

These appeals have been filed against the order of the CESTAT dismissing the appellants' appeals on the ground that the appellants had not complied with the provisions of Section 35B(2) of The Central Excise Act, 1944. The said Section reads thus:-

“35B. Appeals to the Appellate Tribunal.- (2)
The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order.”

It has been held by a Division Bench of this Court in ***Commissioner of Central Excise, Delhi-III (Gurgaon) vs. B.E. Office Automation Products Pvt. Ltd, (2010) 249 ELT 24*** that the compliance with the Section is necessary and that in the event of the failure to comply

with the same, no appeal is deemed to have been instituted in the eyes of law. The Division Bench, in that case, dealt with Section 130 of the Customs Act, 1962, which is *para materia* to Section 35B(2) of the Central Excise Act, 1944, with which we are concerned.

The Supreme Court in *CCE, Vadodara vs. Rohit Pulp and Paper Mills, (1998) 101 ELT 5 (SC)* held that the provisions of Section 35B (2) are clearly required as a prerequisite to the direction to any Central Excise Officer to file an appeal. As no such direction was produced, the appeal was dismissed.

In the present case also, Section 35B(2) has not been complied with. The documents tendered across the Bar during the hearing of these appeals also do not indicate compliance of the provisions of Section 35B(2) of the Act.

The appeals are, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

15.07.2015
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