**(2014) 07 GUJ CK 0094**

**In the Gujarat High Court**

**Case No :** Tax Appeal Nos. 671 to 673 of 2014

Commissioner of Central Excise APPELLANT

Vs

Godrej Industries Ltd. RESPONDENT

**Date of Decision :** 31-07-2014

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 3(1)

**Citation :** (2016) 334 ELT 56 : (2014) 47 GST 713

**Hon'ble Judges :** Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

**Bench :** Division Bench

**Advocate :** R.J. Oza, Advocate for the Appellant

# Judgement

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Mukesh R. Shah, J.—Feeling aggrieved and dissatisfied with the impugned common order dated 11/11/2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad in Appeal Nos. E-10634 to 10636 of 2013, revenue has preferred all these Tax Appeals with the following proposed substantial substantial questions of law: "(A) Whether in the facts and circumstances of the case, the Tribunal has committed the substantial error of law in finally deciding appeal of the respondent on merits at the hearing of stay petition filed by the respondent?

(B) Whether in the facts and circumstances of the case, the Tribunal has committed the substantial error of law in holding that the Education Cess & Secondary & Higher Education Cess (for the third time) on the aggregate of the duties of the customs is not payable by 100% EOU in respect of the DTA clearances, under the proviso to Section 3(1) of the Central Excise Act, 1944?

(C) Whether in the facts and circumstances of the case, the Tribunal has committed the substantial error of law in holding that the Education Cess & Secondary & Higher Education Cess is not leviable under Section 93(1) of the Finance Act, 2004, upon the 100% EOU in clearances in DTA?

 

(D) Whether in the facts and circumstances of the case, the Tribunal has committed the substantial error of law in holding that the notification No. 23/03-CE, dated 31/3/2003 of the CBEC is the subordinate piece of legislation and therefore, not to be acted upon, over and above the statutes?"

Having heard Mr. R.J. Oza, learned counsel appearing on behalf of the department and considering the impugned judgement and order passed by the learned tribunal, it appears that while passing the impugned judgment and order, the learned tribunal has relied upon the decision of the tribunal in the case of 2010 (253) ELT 203. It is reported that against the aforesaid order passed by the learned tribunal in the case of Sarla Performance Fibers Ltd. (supra), the department preferred Tax Appeal Nos. 2012 of 2010 along with other Tax Appeals and by order dated 19/1/2012, the Division Bench of this Court has held that against the order passed by the learned tribunal in the case of Sarla Performance Fibers Ltd. (supra), appeal would not be maintainable before this Court and the appeal would be maintainable before the Hon''ble Supreme Court. In the said decision, the Division Bench has observed as under:-- "With above discussion, if we revert back to the facts of the case, as already noted, the dispute between the parties and which came to be settled by the Tribunal by the impugned order is with respect to the question whether the manufacturers are required to pay education cess on the computation of the customs duty and the CVD on which, once they have already paid such education cess. The Tribunal ruled in favour of the manufacturers and rejected the Revenue''s case that such education cess was required to be paid once again. To our mind, such decision of the Tribunal would certainly be covered under the expression "the order determining a question having relation to the rate of duty of excise". If the Department is correct in its stand, the manufacturers would have to pay excise duty at a rate higher than what they have been paying. In other words, computation of excise duty would have to include component of education cess. On the other hand, if the manufacturers are correct in their stand, such education cess would be excluded. In any case, it would have a direct bearing on the rate at which manufacturers should pay the excise duty on their clearances in the DTA from EOU Units. In that view of the matter, we are of the opinion that the respondents'' preliminary objection is required to be upheld.

All Tax Appeals are dismissed."

2. In view of the above decision of the Division Bench of this Court, all these appeals are not required to be entertained and are required to be returned to the appellant to prefer appeals before appropriate Court and/or the Hon''ble Supreme Court to challenge the impugned order passed by the learned tribunal before the Hon''ble Supreme Court, if permissible under the law. Under the circumstances, all these appeals are not entertained and are disposed of. Registry is directed to return the Appeal Memo of the respective appeals with Annexures, after keeping xerox copies of the same, to the learned advocate appearing on behalf of the appellant, so as to enable the appellant to present the

 

same before the appropriate Court considering the provisions of the Central Excise Act.