

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 66 OF 2007

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Commissioner, CGST & Central Excise,
Pune – I, Commissionerate, GST Bhawan.

.. Appellant

Versus

Dhariwal Industries Limited & Ors.

.. Respondents

Mr. J. B. Mishra a/w. Mamta Omle a/w. Rupesh Dubey, Advocates for the Appellant.

Mr. Sujay Kantawala a/w. Mayur Shroff, Aishwarya Kantawala, Jeffrey Caleb & Ayushi Jha i/b. Brijesh Pathak, Advocates for the Respondents.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: December 10, 2025

P. C.

1. The above Appeal has been placed on board today to determine whether the present Appeal would lie before this Court under Section 35G of the Central Excise Act, 1944, or whether the same would lie before the Hon'ble Supreme Court under Section 35L. It was the submission of the Respondent that the Appeal would lie only to the Hon'ble Supreme Court and not before this Hon'ble Court because the order of the Appellate Tribunal relates to determination, not only to the rate of duty of excise, but also of the valuation of goods for the purposes of Assessment. Once this is the case, the

Appeal to the High Court is not competent, and the Appeal has to lie only to the Hon'ble Supreme Court.

2. We have heard the learned Counsel for the parties on this limited aspect only. We have carefully perused the impugned order passed by the Tribunal. The same can be found at Page No. 57 of the paper-book. On going through the order of the Tribunal, we find that the demands raised by the Revenue, and which were partly allowed by the Commissioner of Central Excise, have been upheld by the CESTAT. Further, the demand confirmed by the Commissioner of Central Excise has been dropped by the Tribunal in the Appeal filed by the Respondent.

3. Nowhere in the order do we find that there is any dispute with reference to the rate of duty or valuation. The entire order proceeds on the basis that the assumptions made by the Revenue were unsustainable, and hence the demands were dropped. Once this is the case, we find that the present Appeal would not fall within the provisions of Section 35L, but would fall within the ambit of Section 35G of the Central Excise Act, 1944. We are fortified in our view when we examine the questions of law that were framed by this Court vide its order dated 29th April 2009. None of these questions of

law, in any way, indicate that there is any dispute with reference to either the rate of duty or the valuation.

4. In these circumstances, we are clearly of the view that the present Appeal is competent before this Court under Section 35G of the Central Excise Act, 1944. Hence the preliminary objection taken to the maintainability of this Appeal by the Respondent is hereby rejected.

5. At this stage, the learned Counsel appearing on behalf of the Respondent submitted that when one peruses the impugned order, it is entirely fact driven and therefore would not give rise to any substantial questions of law. We are afraid we cannot entertain this argument at the present stage, because this Court, while admitting the Appeal, was already of the opinion that the impugned order gives rise to substantial questions of law and have framed and as such. If at the hearing, the Court finds any merit in the aforesaid submission, it would then consider the same and pass appropriate orders accordingly.

6. We now place the above Appeal on board for directions on 14th January 2026, when the Court shall decide the date and time for fixing the above Appeal for hearing and final disposal.

7. Stand over to **14th January 2026.**

8. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.]

[B. P. COLABAWALLA, J.]