

**2014 (4) ECS (274) (Tri.- Del.)**

In the Customs Excise & Service Tax Appellate Tribunal  
West Block No.2, R. K. Puram, New Delhi-110066

**C.C., NEW DELHI**

*Vs.*

**M/s. KEDIA (AGENCIES) PVT. LTD.**

**Date of Hearing: 12.6.2012**

**Date of Decision: 1.10.2012**

Excise Appeal No. 651 of 2010 SM

[Arising out of Order-in-Appeal No. CCA/ICD/120/2010 dated 8.9.2010  
passed by the Commissioner of Customs (Appeals), Delhi]

Appearance:

Shri Sumit Kumar, AR

For the Appellant

Shri Mohan Lal, Advocate

For the Respondent

**CORAM:**

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

*(Misc Oral Order No. C/M/183/12-Cus FO 58370/2013)*

**"In the shipping bills, filed by the assessee they did not file any declaration for claiming the export incentive. However, they subsequently filed an application with the Range office of the DGFT in Kolkata for duty credit entitlement towards VKGUY Scheme under Chapter 3 of the Foreign Trade Policy 2004-2009." (para 3)**

**Nothing was made known to Customs authorities by the respondent at the time of export as to the eligibility and permissibility of the benefit of the scheme sought to govern the respondent. Plea of export under "VKGUY" scheme is belated. Had there been any evidence by the respondent at the time of export of the goods in question, that would have been a case under section 149 of Customs Act, 1962 but that is not so." (para 42)**

**"When no evidence is available to appreciate the claim of the respondent at the time of export it is difficult to accede to his request subsequent to export. If contention of respondent is agreeable, there shall be excessive exercise of jurisdiction which is not permissible under law. What that is not permitted to be done directly cannot be done indirectly. Therefore, learned Technical Member has rightly observed that the amendment sought after export is not entertainable. Admitted case of the respondent**

**is that he did not lead any evidence at the time of export in respect of the claim made after export which made his claim fatal. Requirement of law not being fulfilled respondent has no right to press the authority to go beyond the scope of law.” (para 45)**

**Per: Archana Wadhwa (for the Bench):**

Being aggrieved with the impugned order of Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard Shri Sumit Kumar, learned DR for the Revenue and Shri Mohan Lal, learned advocate for the respondents.
3. As per facts on record, the respondents filed 155 shipping bills from the period 1.6.2008 to 16.3.09 as free shipping bills showing the export of 'Cutck Block (Acacia Catechu)'. In the said shipping bills, they did not file any declaration for claiming the export incentive. However, they subsequently filed an application with the Range office of the DGFT in Kolkata for duty credit entitlement towards VKGUY Scheme under Chapter 3 of the Foreign Trade Policy 2004-2009 along with all the relevant information. The objection was raised by the said office as regards the absence of endorsement on the said shipping bills in terms of para 3.23.8 of Hand Book of Procedure. Deficiency letter dated 12.2.09 was issued to the respondents to remove the above deficiency and to make a declaration on the shipping bills to the effect - " I/we hereby declare that I/we shall claim the benefit as admissible, under Chapter 3 of FTP".
4. Admittedly, no such declaration was required to be made in respect of shipping bills filed before 1.4.08. The provisions of Hand Book of Procedures was amended vide para 3.23.8 wherein it was mentioned that export shipment filed under free shipping bill for export after 31.5.08, the same would contain the declaration to the above effect. As the shipping bills were filed by the respondents during the period 1.6.08 to 16.3.09, the same required the declaration. The respondents also approached the DGFT Udyog Bhawan with a request to consider the issue of duty credit script under the above scheme.
5. On the above facts, the adjudicating authority vide his order dated 24.4.10, rejected the respondents request for making the above declaration in terms of provisions of Section 149 of the Customs Act, on the ground that the same would amount to introduction of new fact on the shipping bill which was not in existence at the time of export. On appeal against the above order, Commissioner (Appeals) took note of various decisions of the Tribunal as also the provisions of Section 149 of the Customs Act and observed that the benefit of duty credit entitlement towards VKGUY scheme under

Chapter 3 of the Foreign Trade Policy is being denied only on the sole ground that requisite declaration was not made at the time of export. He further observed that there is no dispute about the fact of export of item 'Cutch Block (Acacia Catechu) filed under Serial No. 120 list 8, Appendix 37A and thus legally entitled or eligible for the benefit of scheme. As such, he held that the declaration required to be made on the shipping bills, should be allowed to be made by the exporters in terms of provision of Section 149 of the Customs Act. He accordingly, set aside the impugned order of adjudicating authority and allowed the appeal.

On going through the grounds of appeal, raised by the Revenue, we find that factum of export of goods as declared by the appellant, is not being disputed. Further, the fact that same are entitled to the benefit of scheme is also not being disputed by the revenue. The only dispute is as to whether the declaration required to be made in terms of exports after 31.5.08 can be allowed to be made subsequent to the export of the goods.

6. The revenue has contended that in terms of section 149, the shipping bill can be amended only on the basis of documentary evidence, which was in existence at the time of export of the goods, the same would be held to be made by the respondents. We find no merits in the above contention of the Revenue. Admittedly, section 149 allows amendment to the documents. Such amendment has to be on the basis of documentary evidence available at the time of export. As such the documentary evidence "appearing in the said section 149" cannot refer to the "amendment" itself. If the same refers to the amendment, as the Revenue has sought to contend, the provisions of said section would become futile and no amendment would admittedly be available after the time of export itself.
7. As regards the merits, the revenue is not contesting the availability of the benefit of scheme to the respondents. Such declaration were not required to be made in terms of exports prior to 31.5.08. The exports made by the appellants are immediately after the said period. Learned advocate for the respondents have relied upon various decisions to impress upon his stand that on such a scenario conversion of shipping bills is permissible. However, without referring to the said decision, we hold that it is only a case of filing a declaration, a condition which was introduced recently and the benefit if otherwise available to the exporter, should be extended. With the above observation, we find no infirmity in the view taken by Commissioner (Appeals). Revenues appeal is accordingly, rejected.

(Pronounced in the open court on 1.10.2012)

**(Archana Wadhwa)**  
**Member (Judicial)**  
**(Mathew John)**  
**Member (Technical)**

8. I have gone through the order recorded by Judicial Member. Since I am not in agreement with the order recorded I am recording this separate order.
9. The issue involved in this case is that the respondent-exporter claimed from the office of the Director General of Foreign Trade ("DGFT" for short) benefit under an Export Promotion Scheme called "VKGUY Scheme" against exports of "Cutch Block (Acacia Catechu)" against 155 Shipping Bills filed for exporting goods during 01.06.08 to 16.03.09.
10. As per law the respondent-exporter should have made a declaration on the shipping bill at the time of export to the effect that they intended to claim the benefit under VKGUY scheme.
11. Such endorsement was not made by the respondent in the shipping bills. So the papers submitted by the respondents to the office of DGFT papers for claiming benefits under VKGUY scheme were returned by the office of DGFT to the respondent advising the respondent to cure the defect that there were no declarations on the Shipping Bills. Thereafter the respondent approached the Customs office for amending the shipping bills to incorporate a declaration in the shipping bills in exercise of the powers under section 149 of the Customs Act.

The declaration sought to be incorporated is as under:

"I/We hereby declare that I/We shall claim benefit, as admissible, under the Chapter 3 of FTP"

12. The Assistant Commissioner refused to incorporate such declaration. Against such order respondent filed appeal with Commissioner (Appeals) and Commissioner (Appeals) has ordered that such amendments be made. Aggrieved by the said order of the Commissioner (Appeal) revenue has filed this appeal before Tribunal.
13. Section 149 of the Customs Act reads as under:  
"SECTION 149. Amendment of documents.- Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:  
Provided that no amendment of a bill of entry or a shipping bill or

bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.”

14. Section 30 deals with amendment of Import General Manifest and is not relevant to the documents in question. Section 41 deals with amendment of Export General Manifest or Export Report and this section is also not relevant to the documents in question. So in the context of this case section 149 alone is relevant. The main part of the section gives powers for amendment of documents presented to the Customs, after its presentation. The power is circumscribed by the condition in the proviso to the said section. It stipulates that if any amendment to any shipping bill is sought after the goods have been exported such amendment shall be permitted only on the basis of any documentary evidence which was in existence at the time the goods were exported. That is to say under this section amendment of a document before the goods are exported, are normally allowed. But amendments after the export of goods have to be done with circumspection as per condition prescribed under the proviso. Such power can be used to correct errors in the document if such errors are obvious from other documents in existence at the time of export. For example the weight of the goods in shipping bill is declared to be 100 Kgs. whereas the weight of the export goods are declared as 1000 Kgs. in other documents like the packing lists, invoice, ARE-4 etc. accompanying the shipping bill. Let us consider another example. In a case where the value of the goods is declared as Rs.100000 when the value was actually US\$ 100000 as evidenced from export contract, letter of credit or similar documents, the amendments can be permitted. The section insists that the amendments should be made only on the basis of documents in existence at the time of export. In view of the illustration as above given I do not agree with the observations of the Judicial Member in para 6 of the order that section 149 would become futile if the sort of amendments sought by the present respondent is not permitted.
15. Now let us examine the merits of the amendments sought in this case. In the first place the exporter wants to make a declaration in the future tense on a Shipping Bill of the past. This is prima facie not consistent with common sense. The proposed amendment is also not consistent with law under section 149 of the Customs Act, 1962. However, the matter cannot be brushed aside for the reason that a declaration in future tense cannot be incorporated in the shipping bill of the past in view of the practice in the matter that come into vogue.

16. The shipping bills were filed without any claim for export benefits and fall under the category commonly known as "Free Shipping Bills" in customs parlance. In fact a specific endorsement "No Export Incentive" is seen in one the shipping bills corresponding to ARE-4 No.22 and 23 dated 07.06.2008.
17. The respondent has produced copies of shipping bills to show that the goods have been examined by the customs authorities. But in fact on shipping bills 1853874 dated 29-05-08, 1860552 dated 17-06-08, 1881615 dated 19-08-08, 1884154 dated 25-08-08, to name a few, the examination report is to the effect that the declaration in shipping bill conformed to markings on packets as per invoice and packing list. These endorsements demonstrate that no examination or testing of goods were done, but only an inspection of the marking on the packages was done which would not have been the case if there were claims for any exports incentive.
18. The DGFT, who is responsible for formulating the policies for grant of VKGUY benefit and also responsible for grant of such benefit, should know best the purpose for making such declaration. This Tribunal can only make a guess as to what is the purpose. The purpose can be two fold, namely,-
  - (i) to ensure that customs authorities make special examination of the goods to make sure that the goods exported are as per the description of goods for which the benefit is notified. If there is any special characteristic relevant for granting such benefit like total weight or any other quality which is relevant is ascertained by inspection of the goods and its verification by tests if required.
  - (ii) To have a record of past imports and different types of claims made by any exporter and to enable compilation of statistics about the shipping bill against which such claims are made.
19. In this matter it is for DGFT to consider whether the non-declaration of the claim at the time of export is fatal to the claim. If it is not considered fatal that authority may grant the benefit notwithstanding the absence of such declaration on the shipping bills. The customs authorities cannot be forced to incorporate a claim in the Shipping Bills which claim was not there at the time of export and make it appear that the goods were examined with reference to such claim.
20. The issue involved in the claim of the respondent is getting split into two, namely,
  - (i) curing the absence of declaration and (ii) granting of the incentive claimed. Further these aspects are sought to be decided by two separate authorities which is a patently wrong

process considering the nature of the defect involved. While making this observation I am conscious of the fact that in the normal course verification of goods with reference to the declaration and grant of benefit are in fact to be done by the two different authorities. But when there is absence of declaration and benefit is to be granted the matter should be decided as a one whole. That is the claim is to be decided considering the issue whether the benefit can be granted ignoring the fact that such claim was not made at the time of export. The issue cannot be split into two separate components of incorporating the declaration by customs authority at a stage when such declaration does not help the customs authority to examine the goods with reference to the claim and then considering the claim separately by another authority. So I am not in agreement with the order as recorded by Judicial Member.

21. While arriving at the above view I have taken into account the instructions issued by CBEC vide Circular No. 04/2004-Cus dated 16-01-04. Para 3.2 of the circular is reproduced below:

“3.2 As regards permitting conversion of free shipping bills into Advance Licence/DEPB/DFRC shipping bills is concerned, it is true over a period of time, with liberalization having been ushered in the Customs administration, clearance of goods is being permitted mostly on the basis of self-declaration made by the exporters on the shipping bills. Such self-assessment scheme necessarily casts the responsibility on the exporter to make up his mind at the time of filing shipping bills as to which export promotion incentive he likes to avail. With the introduction of the system of on-line assessment, such request for conversion at a later date creates difficulties and it is not advisable to encourage such conversion.

It is, therefore, clarified that conversion of free shipping bills into Advance Licence/DEPB/DFRC shipping bills should not be allowed. As regards permitting conversion of shipping bills from one export promotion scheme to another is concerned, it is clarified that such conversion should only be allowed where the benefit of an export promotion scheme claimed by the exporter has been denied by DGFT/MOC or customs due to any dispute. Such conversion may be permitted on merits by the Commissioner on case to case basis subject to the following conditions:

- (a) The request for conversion is made by the exporter within one month of the denial/rejection of the benefit claimed.
- (b) On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.

- (c) The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB Schedule as the case may be.
  - (d) On the basis of S/Bill/export documents the exporter is fulfilling all conditions of the Export Promotion Scheme into which he is seeking conversion.
  - (e) The exporter has not availed benefit of the export promotion Scheme under which the goods were exported and no fraud/misdeclaration/manipulation/investigation is initiated against him in respect of such exports.”
22. From the many decisions cited by the appellants and from Boards circular it can be seen that over a period of time a practice of incorporating change in declarations as was in existence at the time of filing of shipping bills at a later point of time has come into vogue. Such a practice should be consistent with the objective of making such declaration and the risk involved in the matter as explained in the circular of the CBEC quote above. The guidelines on the circular are consistent with the objectives of making such declaration. I have also considered the various decisions cited by the appellants. The facts of the cases are different in as much as in most cases the checks necessary for grant of the new benefits are conducted at the time of export and the change in claim is consistent with the guidelines issued by CBEC in this regard. I am of the view that the facts of this case are similar to the case decided by the Delhi High Court in the case of Terra Fills Pvt. Ltd. Vs. CC-2011 (268) ELT 483 (Del).
23. The checks to be carried out by customs authorities are prescribed at different levels of percentage of checks and rigor of the check when a free shipping bill is filed the risk to the state is minimal because there is only repatriation of foreign exchange into the country. But if there is any benefit to be granted based on such value there has to be higher level of check.
24. In this case the shipping bills filed were free shipping bills. So naturally the level of check would have been at the lowest level which would not have been the case if there was a claim for VKGUY scheme in the shipping bill before the goods left the customs custody.
25. I am of the view that this matter involves an issue of general applicability and the issue of amendment after shipping bills export cannot be seen as an isolated incident in this case where some sort of relief has to be granted to the respondent.
26. In view of the facts and law as explained above I am not in agreement with the order recorded by Member (Judicial) and I am of the view

that the appeal filed by Revenue should be allowed by setting aside the impugned order of the Commissioner (Appeal).

27. This need not be a bar on grant of the benefit by the DGFT if they are of the considered view that the absence of the declaration is not a fatal defect and their claim can still be allowed.

**Mathew John**  
**(Technical Member)**

POINT OF DIFFERENCE OF OPINION.

28. In the facts and circumstances of the case-

Whether it is proper to make amendments in the shipping bills to include the declaration as desired by the respondent as recorded by Judicial Member?

OR

Whether it is proper to refuse such amendments as held by the Technical Member?

(Pronounced in Court on 01.10.2012)

**Archana Wadhwa**  
**(Judicial Member)**

**Mathew John**  
**(Technical Member)**

29. The Registry may place the matter before president CESTAT for taking appropriate steps to resolve the above difference in opinion.

**Archana Wadhwa**  
**(Judicial Member)**

**Mathew John**  
**(Technical Member)**

**Per: D.N. Panda:**

30. This reference is against following question framed by Division Bench which heard the appeal of Revenue originally and pronounced its difference on 1st October, 2013 as under:

“Whether it is proper to make amendments in the shipping bills to include the declaration as desired by the respondent as recorded by Judicial Member?

OR

Whether it is proper to refuse such amendments as held by the Technical Member?

31. Subsequent to export of “Cutch Block (Acacia Chatechu)” when

the respondent made a letter dated 30.4.2009 requesting for amendment of 155 shipping bills under section 149 of Customs Act, 1962 claiming benefit under "VKGUY" scheme, learned Authority denied such amendment on the ground that the shipping bills at the time of export did not contain the entitlement to the benefit of the above scheme.

32. In para 5 of the referral order it is recorded by learned Judicial Member that the only dispute was whether the declaration was required to be made in respect of export after 31.5.2008 and export benefit to be allowed subsequent to the export of the goods. In para 6 of the order she recorded that section 149 of Customs Act, 1962 allows amendment to the shipping bills on the basis of documentary evidence available at the time of export. It is further recorded that the documentary evidence appearing in section 149 cannot refer to the amendment itself. If the same refers to the amendment, the provision of section 149 would become futile and no amendment would admittedly be available after the time of export itself. In para 7 it has been recorded that when Revenue did not contest availability of benefit of the claim to the respondent appeal of Revenue was liable to be rejected.
33. On the other hand, learned Technical Member in Para 9 of the order has recorded that export incentive under "VKGUY" Scheme claimed by the respondent before DGFT was in respect of export made during 1.6.2008 to 16.2.2009. Declaration required under the scheme did not appear on the shipping bills at the time of export conveying intention of the appellant as to claim of benefit under the above scheme. DGFT advised the respondent to cure the defects on the shipping bills approaching custom authorities for amendment thereof incorporating the declaration.
34. Learned Technical Member examining provisions of Section 149 of the Customs Act, 1962 recorded in Para 14 of the order that power to amend shipping bills is exercisable subject to the condition stipulated therein and where amendment is sought after the goods are exported, that is permissible only on the basis of documentary evidence in existence at the time of export. Accordingly amendment is possible where there is obvious error from the documents in existence at the time of export. He noticed in para 16 of the order that the shipping bills were filed without any claim for export benefit and those were "free shipping bills".
35. In para 17 of the order learned Technical Member recorded that contents of shipping bills were examined by the Customs authority at the time of presentation thereof and also looked into the markings on packet as per invoice and packing list. When there

was no claim of export incentive made in the shipping bills at the time of export, customs authorities were deprived of examining the eligibility and availability of the benefit under the scheme to the assessee at that time. In Para 18 of the order he recorded that object of the scheme calls for detailed examination of eligibility to the benefit if that is claimed through shipping bills at the time of export but not subsequent thereto. Accordingly, he held that custom authorities having no scope to examine entitlement of the respondent assessee to the export incentive claimed subsequent to export, that is not permissible at a belated stage. So also when there was no documentary evidence available along with shipping bills at the time of export, amendment sought by the respondent was deniable.

36. In Para 20 of the order, learned Technical Member has expressed that the amendment provision in law cannot read as a casual exercise but an evidence based event at the time of export to be tested thoroughly. He also looked into CBEC circular No. 04/2004-Cus dated 16.1.2004 to analyse the need of scrutiny by customs in respect of export incentive claim shipping bills. Relying on the judgement of the Hon'ble High Court of Delhi in the case of Terra Fills Pvt. Ltd. vs. C.C., reported in 2011 (268) ELT 483 (Del.) in para 22 of the order he opined that the guidelines in circular are consistent with the object of the scheme so as to conduct scrutiny when export incentive is claimed.
37. In para 24 of the order learned Technical Member reached to the conclusion that free shipping bills having been filed by respondent assessee customs was deprived of examination of permissibility of the export incentive to the assessee. Had the respondent disclosed that the shipping bills were subjected to export under "VKGUY" scheme, customs authorities would have examined the eligibility and permissibility of benefit claimed by the respondent, at the time of export. But it had deprived customs to conduct the scrutiny in the manner known to law for which it foregoes its rights to claim any benefit which had not met scrutiny by Customs Authority at the time of export. Lateral plea of amendment under section 149 of Customs Act, 1962 for no documentary evidence laid by the respondent at the time of export was accordingly denied by learned Technical Member questioning locus standi of Respondent to the claim made belatedly.
38. On the aforesaid back ground questions as aforesaid were referred for answer.
39. Learned Counsel for Respondent submits that the benefit of scheme "VKGUY" is permissible to the respondent. The amendment sought

was not to convert the shipping bill into any other scheme. Learned Judicial Member is correct to say that amendment is permissible. He relied upon the decision of the Tribunal in the case of Shree Rayalaseema Dutch Kaseenbouw Ltd. vs. C.C. (Export), Chennai - 2013 (294) ELT 235 (Tri.-Chennai). Prayer of the respondent was to uphold the order recorded by learned Judicial Member since learned Technical Member did not draw proper conclusion.

40. Revenue on the other hand submits the benefit of scheme is a policy decision subject to statutory mandate under Customs Act, 1962. Section 149 does not grant any power to Customs authorities to amend the shipping bill after the goods left India. The goods while in the port for export, shipping bill can be amended at that time exercising power under section 149 of the Customs Act, 1964 since the shipping bill has to go along with cargo. There is no authority under law to grant any post facto amendment when there was no existence of any evidence at the time of export. Therefore, any post facto amendment shall run counter to the provision of section 149 of the above Act. Level of check is rigorous in case of declaration by an exporter to avail any notification benefit or any benefit allowed by a scheme under the law. Free shipping bills filed by respondent do not oblige Customs authorities to record that the export was under a scheme. There is no clerical mistake made by Customs authorities to order post shipment amendment. A scheme under which an export is made is required to be disclosed on the shipping bill. That is mandate of law. If contention of the respondent is allowed that shall become an encroachment over the power of Customs authorities to defeat the spirit of section 149 of Customs Act, 1962 and any amendment after export if made shall be abuse of process of law and shall result in illegality. Where an export is not made under a scheme, in that circumstance that is allowed by preliminary inspection without rigorous test. Revenue, accordingly, supported the order recorded by learned Technical Member.
41. Heard both sides and perused the record.
42. Respondent failed to show copy of DGFT letter which required the respondent to get shipping bill amended. Nothing was made known to Customs authorities by the respondent at the time of export as to the eligibility and permissibility of the benefit of the scheme sought to govern the respondent. Plea of export under "VKGUY" scheme is belated. Had there been any evidence by the respondent at the time of export of the goods in question, that would have been a case under section 149 of Customs Act, 1962 but that is not so.
43. Revenue is expected to act within the frame work of law to protect interest of Revenue. Shipping bill related to the period 1.6.2008 to

16.3.209 and amendment thereto was filed on 13.4.2009. After one month of the last consignment the amendment was sought by the respondent.

44. Citation made by respondent in the case of Rayalaseema Dutch Kaseembouw Ltd. (supra) relates to a case of public notice of DGFT issued on 21.8.1998 granting retrospective benefit of conversion of shipping bill into DEPB benefit scheme. But the present case is not a case of notification of DGFT to grant benefit to past exports of the Respondent.
45. Plea of respondent that there was curable defect in shipping bills is inconceivable and does not call for exercise of power of customs authorities under section 149 of Customs Act, 1962 at the post export stage. When no evidence is available to appreciate the claim of the respondent at the time of export it is difficult to accede to his request subsequent to export. If contention of respondent is agreeable, there shall be excessive exercise of jurisdiction which is not permissible under law. What that is not permitted to be done directly cannot be done indirectly. Therefore, learned Technical Member has rightly observed that the amendment sought after export is not entertainable. Admitted case of the respondent is that he did not lead any evidence at the time of export in respect of the claim made after export which made his claim fatal. Requirement of law not being fulfilled respondent has no right to press the authority to go beyond the scope of law. There is no scope to disagree with the conclusion of learned Technical Member for the statutory mandate of section 149 of Customs Act, 1962 requiring existence of evidence at the time of export to amend shipping bills. In the result, it is proper to refuse the amendment sought by the respondent. Reference is answered accordingly.
46. Registry is directed to place the record before the original Bench for passing appropriate order.

(Pronounced in the Open Court on 28th Oct., 2013.)

**(D.N. PANDA)**  
**JUDICIAL MEMBER**

**Final Order**

47. In view of the majority order, the impugned order of Commissioner (Appeals) is set aside.

**(Archana Wadhwa )**  
**Member (Judicial)**  
**(Mathew John)**  
**Member (Technical)**