



**TAX
ALERT**

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on central excise
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Drawback admissible on central excise portion even if goods procured from traders.

2016-TIOL-804-CESTAT-DEL

Issue: Whether drawback on central excise portion will be admissible on goods purchased from trader i.e., open market?

Facts: Assessee had exported some goods and claimed that impugned goods were manufactured by supporting manufacturer but on enquiry by department it was found that the goods were not manufactured but were purchased from the traders i.e., open market. Department held that duty drawback on central excise portion is inadmissible on the said goods and hence imposed penalties on the proprietor.

Appellant Contention: Appellant did not contest the allegation that the supporting manufacturers did not exist or did not manufacture impugned goods and were mere traders. Appellant also cited case of **Kultar Export vs. CC** which is similar to the present case wherein CESTAT held that when goods were acquired from the open market, central excise portion of the drawback was admissible.

Department Contention: Department contended that, case of Kultar Export can be distinguished from the present case in the manner in as much as in the present case the appellant had submitted false declarations in the name of supporting manufacturers, whereas this was not in the case of Kultar Export.

Observation: The Honb'le Delhi Tribunal observed that the present appeal is similar to the case of Kultar Export vs. CC wherein the declaration of supporting manufacturers were found false, implying that the impugned goods were purchased from open market. Further in the said case, the Tribunal had analysed the matter in detail to arrive at conclusion that even in cases where goods were procured from the open market, the central excise portion of drawback was admissible.

Held: Owing to the binding nature and alike reasons, impugned order set aside and appeal was allowed in favour of Appellant.