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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOMS APPEAL NO. 54 OF 2016

The Commissioner of Customs MS_IV … Appellant
vs.
M/s. Amba Expo Fab and Anr. … Respondents

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Mr. Pradeep S. Jetly for the Appellant.
Mr. Prakash Shah a/w. Mr. Jas Sanghvi i/b. PDS Legal for the Respondents.

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CORAM : A.S. OKA & A.K. MENON, JJ.
DATE : 22nd NOVEMBER, 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Perused the order dated 21st August, 2017 by which a notice for final disposal at the admission stage was issued. Following substantial question of law arises in this appeal :

> *"Whether the CESTAT after holding that the Order-In-Original passed by the Commissioner is without jurisdiction, was right in law, in setting aside the same, without giving an option for denovo adjudication?*

2. The impugned judgment and order dated 6th November, 2012 has been passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai on appeals preferred by the respondent-assessee.

3. A Show Cause Notice dated 31st August, 2004 was issued by the Directorate of Revenue Intelligence (DRI) to the respondents. An Order-In-Original dated 18th March, 2008 was passed by the Commissioner of Customs (Import), Nhava Sheva confirming the duty demand under the Show Cause Notice. By the impugned judgment, the Appellate Tribunal has set aside the Order-In-Original only on the ground that the Commissioner of Customs (Imports), Nhava Sheva had no jurisdiction to adjudicate upon the Show Cause Notice. Paragraph 8 of the impugned order reads thus :

> *"Accordingly, the impugned order is set aside and the appeals are allowed. Appeals and stay applications are disposed of in the above terms".*

4. Learned Counsel appearing for the appellant has made only one submission. His submission is that the impugned Order-In-Original has been set aside only on the ground that Commissioner of Customs(Import), Nhava Sheva had no jurisdiction to adjudicate upon the Show Cause Notice and hence, after setting aside the order-in-original the Appellate Tribunal ought to have remanded the matter to enable the Appropriate Authority / Officer to adjudicate upon the Show Cause Notice in accordance with law.

5. Learned Counsel appearing for the respondents submitted that respondents had raised several issues including the issue of legality and validity of the Show Cause Notice on several grounds. He pointed out that the said issues have not be decided by the Appellate Tribunal.

6. We have perused the impugned judgment and order. Without going into the merits of the Order-In-Original which was impugned before the Appellate Tribunal, the same has been set aside only on the ground that the Commissioner of Customs (Import), Nhava Sheva had no jurisdiction to Act as an Adjudicating Authority and to pass an order on the Show Cause Notice. The Appellate Tribunal has not adjudicated upon the question of legality of the Show Cause Notice and proceedings initiated on the basis of Show Cause Notice. As the Order- In-Original has been set aside only on the ground that the concerned Commissioner had no jurisdiction, it is obvious that a fresh adjudication can be made by the Officer empowered to adjudicate upon the Show Cause Notice dated 31st August, 2004. The contentions which are raised by the respondents regarding the legality of the Show Cause Notice, jurisdiction of the authority to issue Show Cause Notice, etc. can be gone into by the Adjudicating Authority.

7. Hence, we dispose of the appeal by passing the following order :

(a) The impugned order of setting aside the Order-In Original is hereby confirmed;

(b) It will be open for the Appropriate Authority / Officer competent in law to adjudicate upon the Show Cause Notice dated 31st August, 2004 to pass appropriate order in accordance with law. While doing so, all the contentions which are raised by the respondents will have to be gone into by the concerned authority and it is clarified that all the said contentions are expressly kept open.

(c) We also make it very clear that we have made no adjudication on the question as to which is the authority or officer to adjudicate upon the Show Cause Notice dated 31st August, 2004;

(d) The Appeal is partly allowed on above terms.

(e) No order as to costs.

(A.K. MENON, J) **(A.S. OKA, J)**