Devendra

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL NO. 27 OF 2016

The Commissioner of Customs (Preventive) ..Appellant

V/s.

M/s. Trade Centre & Ors. ..Respondents

Mr. Pradeep S. Jetty for the Appellant.

Mr. Prakash Shah a/w Mr. Jas Sanghavi i/b PDS Legal for the Respondents.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 8TH AUGUST, 2017

P.C.

1. Heard the learned counsel appearing for the Appellant and the learned Counsel appearing for the Respondent. By the order impugned dated 10th March 2014, the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai, decided the Appeals preferred by the Appellant against the order passed by the Commissioner of Customs (Preventive), Mumbai which is dated 31st January 2007.

2. The only submission made by the learned counsel appearing for the Appellant is that an appeal under Section 129A of the Customs Act, 1962 (for short 'the said Act') was not maintainable, in view of the first proviso to sub-section (1) of Section 129A. He placed reliance on the decision of

the **Gujarat High Court** in the case of **Commissioner of Central Excise & Customs, Surat-I V/s. Surat Exim Pvt. Ltd**[1]**.** He also relied upon a decision of **Madras High Court** in the case of **Commissioner of Customs, Tuticorin V/s. Stallion Garments**[2].

3. We have perused Section 129A Clause (a) of sub-section 1 provides that "any person aggrieved by the decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority may Appeal to the Appellate Tribunal". Clauses (b), (c) and (d) deal with Appeals against the orders passed by the authorities names thereunder. There are two provisos to sub-section 1 which exclude the right of the Appeal. The first proviso is applicable only when an Appeal is sought to be preferred against any order referred to in Clause (b). Even second proviso which confers discretion on the Appellate Authority to admit an Appeal is applicable when an order under Appeal is the one referred in Clauses (b) or (c) or (d).

4. We, therefore, do not agree with the submission canvased by the learned Counsel appearing for the Appellant that the Appeal under Section 129A was not maintainable. In our view, the Appeal was maintainable under Clause (a) of sub-section (1) of Section 129A of the said Act.

1 **2014 (303) E. L. T 68 (Guj.)**
2 **2014 (308) E.. L. T. 467 (Mad.)**

5. Hence, we find absolute merit in this Appeal. Accordingly Appeal is dismissed with no order as to costs.

(RIYAZ I CHAGLA J) **(A.S. OKA, J)**