IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Central Excise Reference No. 6/2003
(The Commissioner Central Excise, Nagpur vs. The Customs Excise & Gold (Control) Appellate Tribunal, Mumbai & anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Shri S.N. Bhattad, Advocate for appellant.
Shri A.J. Bhoot, Advocate for respondent.

CORAM : M.S. SANKLECHA & MANISH PITALE, JJ.

DATE : 23.6.2017.

This is an application filed under Section 130-A of the Customs Act, 1962 (Act). This application relates to the order dated 17th February, 2003 of the Custom, Excise and Service Tax Tribunal earlier known as Customs, Excise and Gold (Control) Appellate Tribunal (Tribunal). The impugned order relates to the application of Anti-dumping Duty under Notification No. 85/97-CUS dated 21.11.1997 while removing the goods from warehouse.

2. This application seeks a direction to the Tribunal to refer the following question of law arising from the impugned order of the Tribunal to this Court:-

"Whether anti-dumping duty has to be charged on goods removed from warehouse in terms of Section 15(1)(b) of the

Customs Act, 1962, when such duty was not leviable at the time of import and it was imposed subsequent to bonding of the goods under Section 60 of the Customs Act, 1962."

3. In terms of Section 130-A of the Act, an application can be filed to this Court seeking a direction to the Tribunal to refer a particular question of law in respect of an order passed prior to 1st July, 2003. However, the order in respect of which direrction is sought must not be one relating to among the other things to the determination of any question having relation with rate of duty custom and value of goods for purposes of assessment. In cases where the order relates to rate of duty or value of goods for purpose of assessment, then an appeal to the Hon'ble Supreme Court under Section 130E of the Act would be the remedy.

4. In this case the impugned order of the Tribunal, as is evident from the question formulated relates to determination of rate of duty of goods for purpose of assessment. The entire issue raised before us in this application is whether Anti-dumping Duty imposed by issuing of Notification No. 85/97 dated 21st November, 1997 would at all be applicable in respect of goods which had been imported prior to its issue. Thus, the remedy of the Revenue, if any, is to file an appeal to the Hon'ble Supreme Court in terms of Section 130E of the Act.

5. In view of the above, we have no jurisdiction to entertain the present application. Therefore, the application is dismissed. No order as to costs.

(MANISH PITALE, J.) **(M.S.SANKLECHA, J.)**

Gohane