<u>THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY</u>
<u>AND</u>
<u>THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM</u>

<u>C.E.A. No. 189 OF 2017</u>

DATE: 16th NOVEMBER 2017

Between:
The Principal Commissioner of Customs & Central Tax, Hyderabad GST Commissionerate.
… Appellant

AND

Gopal Jaju
… Respondent

Counsel for the Appellant : Mr. Swaroop Orilla For Mr. M.V.J.K. Kumar Learned Special Standing Counsel for Central Excise, Customs & Service Tax

Counsel for the respondent :

THE COURT MADE THE FOLLOWING:

J U D G M E N T: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Appeal arises out of Order dated 02.02.2017 in Appeal No.E/588/2007 on the file of Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad (Bench – SMB) (for short "the Tribunal).

We have heard Mr. Swaroop Oorilla, learned Junior Standing Counsel representing Mr. M.V.J.K. Kumar, learned Senior Standing Counsel for Central Excise, Customs and Service Tax and perused the record.

A property belonging to a defaulting assessee, by name M/s. Moghul Textiles Ltd. was put to public auction by the Customs and Central Excise Department. The respondent emerged as the highest bidder. However, as he came to know that the auction property was a shikam land, he sought for refund of the EMD. As his request for refund was not considered, the respondent filed a Writ Petition. In pursuance of an interim order passed in the Writ Petition, the Chief Commissioner of Customs and Central Excise, Hyderabad has considered the claim of the respondent and passed a detailed order on 18.07.2007, setting aside the auction sale conducted on 27.02.2007 and directing refund of the EMD of Rs.26,25,000/- to the respondent. Feeling aggrieved by the said order, the Commissioner of Customs & Central Tax, Hyderabad, filed Appeal No.E/588/2007 before the Tribunal. By the Order assailed in this Appeal, the Tribunal has dismissed the Appeal, confirming the order of the Commissioner, on merits.

At the hearing, we have questioned the counsel as to under what provision of law, the Customs Department was entitled to file an Appeal before the Tribunal. The learned counsel replied that under Section 35B of the Central Excise Act, 1944 (for short, 'the Act'), such Appeal is maintainable. After carefully going through the said provision, we find that the said provision has no application whatsoever to an order passed by the Commissioner which is not traceable to any of the orders referred to in the said provision. Indeed, a perusal of the Order passed by the Chief Commissioner, assailed before the Tribunal, shows that he has set aside the auction and ordered refund of the EMD, in exercise of the powers conferred under Rule 20 of the Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995. Thus, the Order passed by him is totally unconnected with the duty, tax or service charges payable under the Act in order to get the provisions of Section 35-B attracted.

In this view of the matter, we find that the very filing of the Appeal before the Tribunal is wholly misconceived and the same is not maintainable. On this ground alone, the Appeal is dismissed. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

16th November 2017

ssv/ksld