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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CUS.A.C. 5/2012

Date of decision: 23rd October, 2017

THE COMMISSIONER OF CUSTOMS (EXPORT) Appellant

**Through: Mr. Amit Bansal, Senior Standing
Counsel with Mr. Akhil Kulshrestha,
Advocates.**

versus

M/S SIPCA INDIA LTD & ORS Respondents

**Through: Mr. L. Badri Narayan, Mr. Yogendra
Aldak & Mr. Karan Sachdev,
Advocates for R-1, 4 & 5.
Mr. Chirag M. Shroff & Ms. Monisha
Suri, Advocates for R-3&8.**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT (ORAL)

SANJIV KHANNA, J.

1. The issue, raised in the present appeal under Section 130 of the Customs Act, 1962 which impugns the order dated 27th September, 2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, relates to exemption from customs duty under Notification 40/2006-CUS. As per the appellant, the respondent is not entitled to the said exemption on import of consignment of printing ink (OVI) meant for printing of currency notes as the exemption is only available for import of inputs i.e. printing ink used in the exported products which in the present case was rice which were packed

in printed polypropylene bags.

2. Learned counsel for the respondents has submitted that the present appeal under Section 130 of the Customs Act, 1962 is not maintainable as the issue raised and decided by the Appellate Tribunal relates to a determination of a question having relation to the rate of duty of customs. He has relied upon a decision of this court in ***Commissioner of Service Tax v. Ernst & Young Private Limited 2014 (34) STR 3 (Del.)***, which examined analogous provisions namely Sections 35G and 35L of the Central Excise Act, 1944 relating to Appeals before the Supreme Court and the High Court.

3. Learned counsel for the Appellant has submitted that the question raised in the present appeal relates to interpretation of Notification 40/2006 as to whether the respondents were entitled to claim exemption from payment of customs duty on import of printing ink (OVI) meant for printing of currency notes.

4. It is an accepted position that in case the exemption notification applies, then the respondents were not liable to pay any import duty or customs duty and in case, the exemption notification does not apply then possibly the stand of the appellant may be correct subject to other defences raised by the respondents.

5. The appellant has claimed that the excess quantity of printing ink (OVI) was imported contrary to the stipulations of the exemption notification. The respondents obviously dispute the said contention of the

appellant.

6. Given the nature of the aforesaid dispute and having examined the ratio of the decision in case of ***Ernst & Young Private Limited*** (*supra*), we do not think that this High Court has jurisdiction to entertain and adjudicate the present appeal. The question raised in the present appeal amongst other things relates to determination of a question relating to the rate of duty of customs and whether or not duty of customs was leviable in view of the exemption Notification 40/2006. Decision in the case of ***Ernst & Young Private Limited*** (*supra*) refers an earlier decision in case of ***Naveen Chemicals Manufacturing and Trading Company Limited v. Collector of Customs 1993 (68) ELT 3 (SC)*** wherein, it has been observed as under :

“11. It will be seen that sub-section (5) uses the said expression ‘determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment’ and the explanation thereto provides a definition of it ‘for the purposes of this sub-section’. The Explanation saved as the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Expression expressly confines the definition of the said expression to sub-section (5) of Section 129D, it is proper that the said Expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the

classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases there for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of goods.”

7. After quoting the aforesaid paragraph, in ***Ernst & Young Private Limited (supra)***, it has been held as under:

“18. On reading of the said paragraph, it is lucid and clear that Supreme Court had stated that questions relating to rate of duty and valuation for the purpose of assessment as defined in the explanation to sub-section (5) to Section 129D of the Customs Act, would include question relating to classification of goods under the tariff, whether or not they are covered by exemption notification; whether value for the purpose of assessment should be enhanced or reduced etc. It was further observed that statutory definition accords to the meaning given to the expression above. For the purpose of present controversy, we are inclined to ignore and not take into consideration explanation 5 to Section 129D or sub-section (5) to Section 35E. However, in spite of the said position, we do not think that the decision in the case of Delhi Gymkhana Club Ltd. (supra) is required to be referred to a Larger Bench. Determination of any question relating to rate of tax would necessarily directly and proximately involve the question, whether activity falls within the charging Section and Service Tax is leviable on the said activity. The said determination is integral and an important adjunct to the question of rate of tax. In case Service Tax is not to be levied or imposed and cannot be imposed under the charging Section, no tax would be payable. The said determination would be direct or proximate

to the issue of rate of tax, which will include nil tax, when no tax is chargeable.

19. If the reasoning given by the Revenue is to be accepted, it will lead to anomaly and substantial confusion. All assessments necessarily have to determine and decide the rate of tax after determining and deciding whether or not activity is chargeable or tax can be levied. Assessments against the assessee would decide the rate of tax applicable once it is held that the activity is chargeable to tax under the F. Act. The words 'rate of tax' in relation to rate of tax would include the question whether or not the activity is exigible to tax under a particular or specific provision. This will be a reasonable and appropriate interpretation and will not cause or result in confusion or ambiguity regarding the appellate forum. Line between exigibility and rate of tax as propounded can be rather thin and superfluous in the present statutory context."

8. In view of the aforesaid interpretation, in the context of Sections 130 and 130E of the Customs Act, 1962, it has to be held that the present appeal is not maintainable before this High Court as one of the issues amongst other things which is required to be determined and decided has a relation to the rate of duty of customs. The appeal is accordingly held to be not maintainable. The appellant obviously has to approach the Supreme Court under Section 130E of the Customs Act, 1962. We clarify that we have not expressed any view on the merits of the appeal.

9. The appeal is accordingly dismissed as not maintainable.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

OCTOBER 23, 2017dk/j

CUS.A.C. 5/2012

Page 5 of 5