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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CUSAA 63/2017 & CM APPL. Nos. 41955-56/2017**

NAVSHAKTI INDUSTRIES PVT. LTD ..... Appellant
Through : Mr. T.P.S.Kang, Ms.Upasant Kang, Mr.Pratap Chandra Rana, Advocates.

versus

COMMISSIONER OF CUSTOMS – NEW DELHI (ICD TKD) ..... Respondent
Through : Mr. Deepak Anand, Junior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

O R D E R

% 05.12.2017

On the last date of hearing, we had asked the learned counsel for the appellant to examine whether the appeal would lie before the High Court or the Supreme Court as one of the grounds raised before the Tribunal related to classification of goods and accordingly the rate of duty.

2. Learned counsel for the appellant accepts that the question raised before the Tribunal related to rate of duty and classification of goods. However, he submits that the decision of the Division Bench of this court in ***Commissioner of Service Tax v. Ernst and Young P. Ltd. (2014) 72 VST 51 (Delhi)*** requires reconsideration as the decision did not notice Section 129C of the Customs Act, 1962. As per the said Section, the President of the Tribunal has been given power to assign the matter to different Benches.

The appeal was not decided by the Bench, designated to hear appeals relating to rate of duty. In our opinion, the question of jurisdiction of the appellate forum i.e. the Supreme Court or the High Court would not depend upon the marking made by the President before the Tribunal.

3. We do not find any ground or reason to reconsider the decision in ***Ernst and Young P. Ltd. (supra)***. The said decision has been followed in several judgments and in fact the enactment were amended to affirm the conclusion.

4. We, accordingly, hold that the appeal is not maintainable before the High Court.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

DECEMBER 05, 2017

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