*Sharayu Khot.*

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

**CUSTOM APPEAL NO. 21 OF 2018**

**The Commissioner of Customs NS-III ...Appellant**

***Versus***

**J. Sons Foundry Pvt.Ltd. ...Respondent**

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Mr. Pradeep S. Jetly, for the Appellant.

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**CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.**

**DATE : 22 October 2018**

**ORDER :**

1. This Appeal under Section 130 of the Customs Act, 1962 ("***the Act***") challenges the order dated 3rd August 2017 passed by the Customs, Excise and Service Tax Appellate

Tribunal (for short "***the Tribunal***").

2. Shri. Jetly, the learned Counsel appearing in support of the Appeal, urges the following substantial question of law for our consideration:-

> Whether in the facts and circumstances of the case and in law the finding of the Tribunal that the Revenue was obliged to inform the importer about change in classification, when in fact goods imported were misdeclared as Stainless Steel Melting Scrap of Duplex Grade 2205, and on examination were found to be cut pieces of Stainless Steel Pipes which were serviceable and usable, is based on no evidence or on partly relevant and partly irrelevant evidence and is otherwise perverse and arbitrary?

3. It is undisputed position before us as is evident from

the question framed that the issue which arises in this Appeal with regard to the appropriate classification of the imported goods.

4. However, Shri. Jetly, the learned Counsel appearing in support of the Appeal, contends that the issue herein is with regard to the misdeclaration in respect of the classification of imported goods by the importer-Respondent.

5. Be that as it may, the basic issue is with regard to the appropriate classification of the imported goods, i.e. whether the goods have to be classified as declared by the importer or as claimed by the Revenue.

6. The Supreme Court in the case of ***Navin Chemicals Mfg. & Trading Co. Ltd. Vs. Collector of Customs***[1] has *inter alia* held that the words "the determination of any question having a relation to the rate of customs duty or the valuation of

1 ***1993(68) E.L.T. 3 (S.C.)***

goods for the purposes of assessment of duty" *inter alia* would include an issue of classification of goods. Therefore, in terms of Section 83 of the Finance Act, 1994 read with Section 35G(1) of the Central Excise Act, 1944, the Appeal on issue of classification is not maintainable before this Court. The remedy for the Appellant, if any, is to file an Appeal to the Hon'ble Supreme Court under Section 35L(1)(b) of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994 by Section 83 thereof.

7. Thus, this Appeal is dismissed as not maintainable before this Court.

**[RIYAZ I. CHAGLA J.]** **[M.S. SANKLECHA, J.]**