R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CUSTOMS APPEAL NO. 63 OF 2018

The Commissioner of Customs, Pune .. Appellant

Versus

M/s. Ballarpur Industries Ltd .. Respondent

....

- Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra for the Appellant

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 12, 2018.

P.C.:

1. This appeal under Section 130 of the Customs Act, 1962 ("**the Act"** for short) challenges the order dated 27.9.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal ("**the Tribunal**" for short).

2. The Revenue has urged the following questions of law for our consideration:-

> “(a) Whether in the facts and circumstances of the case, the Tribunal has erred in allowing the Importer's appeal stating that the Show Cause Notice having no basis?

(b) Whether the Tribunal has erred in observing that there was no proposal in the show cause notice to levy anti dumping duty on the product SBR-1900?

(c) Whether the Tribunal has erred in appreciating the fact that vide Notification No. 15/2003 DG (AD) dated 30.7.2003 and Notification No. 100/2004 Cus dated 28.9.2004, the Sunset Review initiated by the DG AD, continued Anti-dumping duty on import of SBR 1900 from Korea R.P.?

(d) Whether the Tribunal has erred in setting aside the demand of anti-dumping duty on SBR 1900 series classified under Chapter 40, confirmed by the adjudicating authority?

3. From the questions as framed, the issue in this appeal relates to rate of anti dumping duty. This duty is levied under Section 9(A) of the Customs Tariff Act, 1962 ("**the Tariff Act**" for short). The proceedings for appeal under the Tariff Act are governed by sub-section (8) of Section 9(A) of the Tariff Act which reads thus:-

> "The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of duty, assessment, non-levy, short levy, refunds, interest, <u>appeals</u>, offences and penalties shall, as far as may be apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."

4. Further the questions as proposed challenges the impugned order to the extent as it held that no anti dumping duty is leviable on the imported goods.

5. It appears to us that this is a classic case of rate of duty and by virtue of exclusion provided in Section 130 of the Act, this Court would not have jurisdiction to entertain such appeal. Therefore, we put this to Mr. Jetly, the learned counsel for the Revenue.

6. Mr. Jetly, the learned counsel in support of the appeal, pointed out that this appeal should be entertained. This as the only relief which the appellant revenue is seeking is the setting aside of the impugned order and a remand of its appeal to the Tribunal. This only because the impugned order proceeded on a factually incorrect basis.

7. The extent of the relief sought against the order of the Tribunal does not decide the jurisdiction / maintainability of the appeal under this Act. The proposed order by the Court will not decide maintainability of the appeal. In view of the reference by incorporation of Section 130 of the Act in

Section 9A(8) of the Tariff Act, rate of duty issue cannot be entertained by us.

8. In our view, as the issue relates to rate of duty by virtue of Section 9A(8) of the Tariff Act read with Section 130 of the Act, the appellant-Revenue would have to approach the Hon'ble Supreme Court in terms of Section 130 E of the Act.

9. Thus, the appeal is disposed of in the above terms.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**