Sharayu Khot.

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

CUSTOM APPEAL NO. 4 OF 2018

The Commissioner of Customs (Import) Mumbai ...**Appellant**

Versus

Fortune Marketing Pvt.Ltd. ...**Respondent**

Mr. M. Dwivedi a/w Mr. Sham Walve, for the Appellant.

Mr. Vikram Nankani, Senior Counsel, a/w Mr. Prakash Shah, i/by PDS Legal, for the Respondent.

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

DATE : 19 September 2018

ORDER :

1. This Appeal under Section 130 of the Customs Act, 1962 ("***the Act***") challenges the order dated 4th April 2017

passed by Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***").

2. The Revenue urges the following question of law for our consideration:-

> "*Whether in the facts and circumstances of the case and in law the learned Tribunal was right in considering the ROM Applications filed by the Assessee thereby restoring the Appeals for fresh hearing when in fact such application was sought to be filed in form of the review of the earlier order by which the Appeal of the assessee was dismissed*?"

3. At the very outset, we pointed out to Shri. Dwivedi, the learned Counsel for the Revenue that the impugned order dated 4th April 2017 of the Tribunal has adjudicated upon appropriate classification of external/portable hard disk drives and its entitlement to exemption under notification No. 6/2011

CE dated 1st March 2011. Thus, an order relating to rate of duty of customs. Therefore, the Appeal from the impugned order is not maintainable to this Court under Section 130 of the Act.

4. In response Shri. Dwivedi, the learned Counsel appearing in support of the Appeal submits that the question as framed by the Revenue only challenges that part of the order which does not relate to any aspect of the rate of duty. However, he is unable to point out that the question as framed arise from the impugned order of the Tribunal. Inspite of the above, the Revenue presses the question of law as framed.

5. We see no reason to entertain this Appeal as the question as framed by the Revenue does not arise from the impugned order of the Tribunal. Moreover, it is very clear from the impugned order that the impugned order relates to a rate of duty issue and therefore, not maintainable before this Court under Section 130 of the Act.

6. In the above view, the Appeal is dismissed, as not maintainable.

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