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

\+ CUSAA 278/2018

COMMISSIONER OF CUSTOMS (GENERAL) ..... Appellant

Through: Mr. Akhil Kulshrestha and Mr.Rishab Gulati, Advocates for Mr. Amit Bansal, CGSC for appellant.

versus

FALCON INDIA ..... Respondent

Through: Counsel for the respondent. (Appearance not given)

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **10.10.2018**

The present appeal in the opinion of this Court is untenable. It seeks to challenge an order of the Commissioner (which apparently has been wrongly styled as order-in-original) that led to the grant of a Customs Broker licence under the Customs Brokers Licensing Regulations, 2013. At the time when the licence was granted the CBLR 2013, as it is called now, was not in force and the previous Regulations of 2004 were in force. The lengthy order-in-original dealt with the reservations of the Department of Revenue Intelligence which objected to the grant of licence on various grounds, principally regarding the investigation of certain allegations of mis-declaration etc. After considering those objections and reservations, the concerned Commissioner of Customs directed the grant of licence accepting the application of the respondent. The Customs Authorities carried the matter in appeal. It was sought to be urged on its behalf – of a preliminary issue with respect to maintainability that the order-in-original itself stated that it was appealable to Customs, Excise and Service Appellate Tribunal (CESTAT) and moreover having regard to Section 129A of the Customs Act, 1962, such an appeal was in fact maintainable, the Tribunal disagreed and rejected the appeal.

It is argued by the Revenue that the expression adjudicating authority would include a Commissioner and all orders of the Commissioner parting character of a decision based upon consideration of rival contentions and positions, would therefore be appealable. It was submitted that the Regulations were framed under the Customs Act and consequently every order made under the Customs Act or Ordinance framed under the Regulations would be appealable.

Section 129A reads as follows:-

> *"**129A. Customs Act, 1962**
> **Appeals to the Appellate Tribunal-***
> *(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-*
> *(a) a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;…….*"

Regulation 21 of the CBLR 2013 provides as follows:-

> *"Regulation 21 of Custom Broker Licensing Regulations, 2013 Appeal by Customs Broker- A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section* (1) *of section* 129 *of the Act. "*

It is evident that appeals to the Tribunal are maintainable at the behest of "persons" who are aggrieved by any order of a Principal Commissioner or by Commissioner of Customs in her capacity as an "Adjudicating Authority". It is important to underline this aspect because but for Regulation 21 even applicants who were declined a licence would not be able to avail of the remedy of appeal to CESTAT. In other words, Regulation 21 constitutes an exception to the general proposition that appeals lie only against adjudicatory orders. This Court is not concerned with the validity of Regulation 21 – as it apparently exceeds the remedy of Section 129A of the Customs Act which is strictly confined to providing for appeals against adjudicatory orders. A salient and long settled principle of law is that appeal is a mandate of Statute. Unless the controlling parent enactment is expressed – or by force of necessary implication, it can be inevitably interfered with the subject matter of a particular dispute, is appealable, appeals cannot be claimed as a matter of right. In these circumstances, that the order of the Commissioner was styled as an order-in-original or even that it mistakenly pointed to an appellate remedy under Section 129-A of the Customs Act, was not in any manner conclusive or whether such appeal was maintainable. This Court is therefore of the opinion that the CESTAT's decision is sound and does not call for an interference. No question of law arises. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 10, 2018
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