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

CUSTOMS APPEAL No. 10 OF 2019
WITH
NOTICE OF MOTION No. 452 OF 2019
IN
CUSTOMS APPEAL No. 10 OF 2019

The Commissioner of Customs (Import-I) .. Appellant

v/s.

Keshlata Cancer Hospital Pvt.Ltd. .. Respondent

Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra for the appellant
Mr. S. Suryanarayanan I/b Mr. Dhiren Akbari for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 15th JULY, 2019

P.C.

1. On 17th June, 2019, we had passed the following order :-

"*1] This appeal under Section 130 of the Customs Act, 1962 challenges the order dated 14th August 2018 passed by the Customs Excise and Service Tax Appellate Tribunal (Tribunal).*

2] By the impugned order dated 14th August 2018, the respondents were granted benefit of Notification No.64/88-CUS dated 1st March 1988.

3] The Revenue urges the following question for our consideration:

"Q. Whether the CESTAT was right in law in setting aside the duty demand, confiscation and penalty ?

4] We note that the issue raised by the Revenue in this appeal is with regard to the entitlement of the respondent to benefit of Notification No. 64/8-CUS dated 1st March 1988.

5] At the very outset, we ask Mr. Jetly, learned counsel for the appellant in support of appeal, whether this issue would not give rise to the rate of duty of customs for the purpose of asset. If yes, then the jurisdiction of this Court is barred in terms of Section 130 of the Customs Act, 1962.

6] Mr. Jetly, learned counsel, invites our attention to the order of the Apex Court wherein the Revenue withdrew its appeal to prosecute its grievance before the High Court in case of ***Commissioner of Customs vs Bharat Hospital and Institute of Oncology*** *as reported in* ***274 ELT page A50****. Thereafter, this Court admitted the appeal of the Revenue on the issue of admissibility of Notification No. 64/88CUS dated 1st March 1988 in case of* ***Bharat Hospital and Institute of Oncology*** *as reported in* ***340 ELT page A206****. In the above view, it is submitted that this Court should exercise the jurisdiction to entertain this appeal.*

7] We note that the Revenue in the case of Bharat Hospital and Institute of Oncology (supra) withdrew its appeal, with liberty to urge all issues before the High Court. It is in that context that this Court was bound to hear the Revenue on merits in an appeal filed before it.

8] In the above view, we would like to hear the respondent on the issue of jurisdiction of this Court to entertain the appeals from the orders of the Tribunal relating to grant of benefit of exemption notification. Prima facie, it appears to be a rate of duty issue and not within our jurisdiction. However, we would take a final decision on the same, after hearing both the Revenue as well as the respondent on the appropriate interpretation of Section 130 and 130E of the Customs Act, 1962.

9] The appellant is also directed to serve a copy of this order upon the respondent.

> *10] At the request of appellant, this appeal is adjourned to 1st July 2019."*

2. Today, when the appeal was taken up for consideration for admission, Mr. Jetly, learned Counsel appearing in support of the appeal again placed reliance upon the decisions of the Apex Court and this Court in *Bharat Hospital and Institute of Oncology* (supra) to contend that this Court would have jurisdiction to entertain the appeal arising from an order of the Tribunal denying the benefit of Notification No.64/1988-CUS dated 1st March, 1998. It is further submitted that this is not a case of assessment being done for the first time. It is submitted that the assessment of the rate of duty had been done at the time of import and it was only on failure to meet / satisfy the consequent conditions by the respondent assessee that a notice of demand has been issued for the duty as well as for imposition of penalty and consequent confiscation. Thus, this Court would alone have jurisdiction to entertain this appeal.

3. On the other hand, Mr. Suryanarayanan, learned Counsel appearing for the respondent states that the issue in this appeal relates to rate of duty for the purposes of the assessment. This is so as the

question involved is the entitlement of the respondent to the benefit of Notification No.64/1988-CUS dated 1st March, 1988. It is further submitted that at the time when the case was originally assessed to duty, the respondent had submitted a bond to comply with the conditions of Notification No.64/1988-CUS dated 1st March, 1988. Thus, it was in the nature of precedent. Further, reliance was placed upon the decisions of the Apex Court in ***Navin Chemicals Mfg. & Trading CO. Ltd. Vs. Collector of Customs, (1993) 68 ELT 3*** and this Court in ***Union of India Vs. Auto Ignation Ltd. (2002) 142 ELT 292*** and the ***Commissioner of Central Excise, Nagpur Vs. Universal Ferro & Allied Chemicals Ltd. (2009) 234 ELT 220*** in support of the submission that the appeal, if any, filed by the Revenue is hit / barred by Section 130(1) of the Act to be before this Court and the appeal, if any, would be before the Hon'ble Supreme Court in view of the clear provisions of Section 131 of the Act.

4. We have considered the rival submissions. However, before proceeding further, it would be appropriate to reproduce Section 130(1) of the Act, which reads as under :-.

> *" Section 130 Appeal to High Court (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after 1st day of July, 2003 <u>(not being an order</u>*

> *<u>relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment)</u>. If the High Court is satisfied that the case involves a substantial question of law.*
>
> *(2) to (3) ....*
>
> *(emphasis supplied)*

5. From the above, it is clear that this Court has no jurisdiction to entertain the appeal from an order of the Tribunal relating amongst other things to the rate of duty of goods and / or valuation of goods for the purposes of assessment. From the above, it is clear that the entitlement to the benefit of exemption from duty under a Notification issued under Section 25 of the Act would give rise to a question of rate of duty of customs for the purposes of assessment. In this case, the respondent had originally cleared its goods a under a bond and, therefore, the assessment in effect is not completed till the bond is discharged on satisfaction of conditions subsequent to import. In fact, it would be considered to be provisional assessment subject to the satisfaction of the condition subsequent. In any event, the word "assessment' as defined at all times under Section 2(2) of the Act includes "Re-assessment". Therefore, the submission of the Revenue that Re-assessment of goods for failure to satisfy condition subsequent to import will not be covered by Section 130(1) of the Act, is not

sustainable in the face of clear provision of the Act. Moreover, the decisions relied upon by the Revenue on the decisions of this High Court and the Hon'ble Supreme Court in *Bharat Hospital and Institute of Oncology* (surpa) were rendered on the basis of a concession made by the parties before the Apex Court. Therefore, it cannot form a binding precedent on the issue arising herein in the absence of Section 130(1) of the Act being considered by the Apex Court.

6. In the above view, coupled with the self-evident position as is clear from the plain reading of Section 130(1) of the Act, this appeal is not be maintainable before us. The remedy, if any, of the appellant against the impugned order would be to file an appeal to the Hon'ble Supreme Court. Thus, the appeal of the Revenue is not maintainable before this Court.

7. Accordingly, this appeal is disposed of in the above terms.

8. In view of the above, pending Notice of Motion is also dismissed as infructuous.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**