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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.243 OF 2006

Commissioner of Central
Excise, Thane-II ...Appellant
vs.
M/s.Durian Industries
Pvt.Ltd. And others ...Respondents

Mr.P.S.Cardozo for the appellant
Mr.Palash H. Dharmadhikari I/b Mr.S.M.Shah for the respondents

CORAM : A.S.OKA, &
M.S.SANKLECHA,JJ.
DATE : APRIL 11, 2019

P.C.:

1 This appeal under section 35G of the Central Excise Act,1944 challenges the order dated 14th December 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short`CESTAT').

2 The appeal was admitted on 24th July 2008 on the following substantial questions of law:

> “(A) Whether on the facts and in the circumstances of the case, the Tribunal can ignore the tangible evidence collected by the department showing the clandestine removal of goods and under-valuation of goods with the

intention to evade duty and which is quasi-criminal in nature?

(B) Whether on the facts and in the circumstances of the case, the Tribunal was justified in allowing the Appeals of the Respondents and other parties without considering the judgment laid down by the Supreme Court in the case of D.Bhoormal that the Revenue is not supposed to prove its case with mathematical precision particularly when overwhelming evidence is produced by the Revenue in support of its contentions?”

3 On perusal of question (A) above, on the last occasion, we put it to the Advocate for the appellant-revenue whether this Appeal would be maintainable before this Court. This in view of section 35G of the said Act clearly providing that an appeal on an issue relating to valuation of goods for the purposes of assessment is not maintainable before this Court.

4 On this the learned counsel for the appellant-revenue took time to take instructions. Thus, the appeal was adjourned to today.

5 Today, on instructions Ms Cardozo appearing for the revenue states that though the issue in appeal does relate to under valuation of the goods, it is not restricted only to it. She states that the issue

in this appeal also relates to clandestine removal of the goods. Therefore, she has been instructed to press this appeal before this Court.

6 We note that section 35G of the Act specifically excludes the jurisdiction of the High Court with regard to the order of the Tribunal dealing with valuation of the goods for the purposes of assessment. In fact, Section 35L (1)(b) of the Act provides for an appeal from the order of the Tribunal before the Hon'ble Supreme Court in respect of appeals relating to valuation of goods for the purpose of assessment. The submission that the appeal as filed involves not only issue of valuation for the purposes of assessment but also other issues warranting an appeal to this Court is not acceptable. Firstly, Section 35L of the Act itself provides that an appeal to the Supreme Court would be maintainable if the order of the Tribunal amongst other things relates to an issue of valuation. Thus, even if the order of the Tribunal has dealt with other issues besides valuation, the appeal has to be before the Hon'ble Supreme Court. Besides, an order of the Tribunal cannot be bifurcated. It has to be challenged as a whole before one forum. Therefore, this Court does not have jurisdiction to entertain this appeal.

7 However, considering the fact that this Appeal was admitted on 24th July 2008, and has been pending for the last 10 years in this Court, we direct the

return of the Memorandum of Appeal to the appellant-revenue so as to enable the revenue to file appropriate proceedings before the Hon'ble Supreme Court from the impugned order dated 14th December 2005.

8 Accordingly, Appeal is disposed of in the above terms.

(M.S.SANKLECHA,J.) (A.S.OKA,J.)