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

<u>*Date of Decision: 6th August, 2019*</u>

\+ CUSAA 210/2019

LAXMI ENTERPRISES ..... Appellant
Through: Mr.Vikram Singh Negi, Adv.

Versus

COMMISSIONER OF CUSTOMS , PREVENTIVE ..... Respondent
Through: Mr.Amit Bansal, Sr.Standing Counsel with Mr.Aman Rewaria, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

: **D. N. Patel, Chief Justice** *(Oral)*

C.M.No.35300/2019*(exemptions)*

Allowed, subject to all just exceptions.

C.M.No.35301/2019*(delay in re-filing)* & **C.M.No.35299/2019** *(delay in filing)*

For the reasons stated in the applications, the delay in re-filing as well as filing is condoned and the applications are disposed of.

CUSAA No.210/2019 & C.M.No.35298/2019 *(stay)*

1. This appeal has been preferred by the appellant challenging the order passed by the Customs, Excise & Service Tax Appellate Tribunal dated 27th February, 2019 (Annexure A-2 to the memo of this appeal).

2. Having heard the counsel for the appellant and looking into the facts and the circumstances of the case, it appears that the show cause notice was issued to the appellant on 11th August, 2016, which mainly related to the

under valuation of goods. The appellant imported reflective luminescent film vide Bill of Entry dated 20th July, 2015. Suspecting mis-declaration and undervaluation, investigation was commenced. Under the statements recorded on 17th September, 2015 and 19th January 2016, the son of the proprietor of the appellant and the authorized signatory of the appellant admitted under-valuation and *Hawala* remittance, and also admitted duty liability for past consignments imported vide Bills of Entry dated 8th March, 2013 and 27th January, 2014. The show cause notice was issued on 11th August 2016, which thereafter culminated in order-in-original of the Commissioner dated 14th June, 2017, rejecting the declared value of clearances affected under 32 Bills of Entry and re-determining the transaction value of the said imports. Differential duty of Rs.1,10,86,061/- was confirmed, along with equal penalty and interest. The seized goods were confiscated with the option to redeem. The appellant preferred an appeal before the CESTAT, which was dismissed, vide order dated 5th February, 2018.

3. Having heard the learned counsel for the appellant and looking to the facts and circumstances of the case, it appears that basically this appeal is challenging the valuation of the goods. So far as this challenge is concerned, the present appeal is not tenable in law before this Court for the following reason:

(i) Sections 130(1) and 130 (E) of the Customs Act, 1962 read thus:

> **"130. Statement of case 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 the 1st day of July, 2003 (not being an order

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), if the High Court is satisfied that the case involves a substantial question of law.

xxx xxx xxx

130E Appeal to Supreme Court. —An appeal shall lie to the Supreme Court from—

[(a) any judgment of the High Court delivered—

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal 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.]"

A reading of the above provisions make it abundantly clear that no appeal would lie to the High Court, where the cases involve any issue relating to rate of duty or value of goods for the purposes of assessment, and that, in all such cases, the assessee would have to move the Supreme Court, under Section 130(E).

(ii) This Court has further clarified the matter in *Commissioner of Service Tax vs. Bharti Airtel;* **2013 SCC OnLine Del 801** wherein it was held that the issue as to whether an appeal would be maintainable before the Supreme Court or the High Court, has nothing to do with the issue raised by the appellant in the appeal, but has everything to do with the order passed by the Tribunal. In other words, if the order passed by the Tribunal involves an issue relating to rate of duty or value of goods for the purposes of assessment, then, even if the said issue is not adjudicated in the appeal filed by the aggrieved appellant, the appeal would, nevertheless, lie to the Supreme Court and not to the High Court.

4. In view of the aforesaid, this appeal is dismissed on the ground of jurisdiction. All pending applications are also disposed of accordingly.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 06, 2019
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