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

CUSTOMS APPEAL NO.17 OF 2021

Manish Virji Shah … Appellant

V/s.

The Commissioner of Customs (Import) … Respondent

Mr.Sriram Sridharan, Advocate for the Appellant.
Mr.P.S.Jetly, Senior Advocate alongwith Ms.Maya Majumdar, Advocates for the Respondent.

CORAM : DHIRAJ SINGH THAKUR AND
ABHAY AHUJA, JJ.
DATE : AUGUST 03, 2022.

P.C.:-

1. This is a customs appeal arising out of the order dated 28th May, 2020 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

2. According to the appellant, the following substantial question of law arises:-

> "Whether in the fact and circumstances, the final order dated 28th May, 2020 of the Appellate Tribunal is legal and proper in law?"

3. With the consent of the learned counsel for the parties, the matter is taken for final disposal.

4. The appellant preferred an appeal before the CESTAT against the order dated 16th November, 2012 passed by the Commissioner of Customs, Nhava Sheva. By virtue of the order impugned in the present appeal dated 28th May, 2020, the CESTAT dismissed the appeal. Learned counsel for the appellant stated that the order impugned is perverse in as much as what was challenged before CESTAT, was not the order dated 26th April, 2012 but order dated 16th November, 2012. It was therefore urged that the Tribunal proceeded to record its findings based upon an order which was never a subject matter of challenge before the said Tribunal. It was further urged that the order dated 26th April, 2012 was in fact also the subject matter of challenge before the CESTAT where the appellant had already succeeded in view of the order dated 12th February, 2013 passed by the CESTAT. It was therefore urged that the Tribunal fell in total error in dismissing the appeal by recording findings based upon an order which was already covered in terms of Tribunal's order dated 12th April, 2013 and therefore, it was vehemently urged that the order impugned was unsustainable and non application of mind writ large on the same.

5. Learned counsel for the respondent however does not contradict the facts which have been recorded hereinabove and in fact suggested that the matter could be remanded to the Tribunal for a fresh consideration of the appeal filed by the appellant.

6. Be that as it may, we hold that order dated 28th May, 2020 is unsustainable and therefore, remand the matter for consideration afresh by the Tribunal.

7. Appeal is allowed and disposed of accordingly. No costs.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**

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