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

CUSTOM APPEAL NO. 23 OF 2021

Nisum Global Limited
carrying on business in the name
and style of Mehul
Exports as sole proprietor thereof
having address at 24, Aram Nagar No.1,
Picnic Cottage, Versova,
Andheri (W), Mumbai 400 063 ....Appellant

V/s

The Commissioner of Custom,
(Exports Promotions), having his office at
3rd Floor, (Annexe Building),
Custom House, Ballard Estate,
Mumbai 400 001. ....Respondent

WITH
CUSTOM APPEAL NO. 24 OF 2021

Nisum Global Limited
carrying on business in the name
and style of Mehul
Exports as sole proprietor thereof
having address at 24, Aram Nagar No.1,
Picnic Cottage, Versova,
Andheri (W), Mumbai 400 063 ....Appellant

V/s

The Commissioner of Custom,
(Exports Promotions), having his office at
3rd Floor, (Annexe Building),
New Custom House, Ballard Estate,
Mumbai 400 001. ....Respondent

WITH
CUSTOM APPEAL NO. 25 OF 2021

Nirmal J. Agarwal,
Age : 54 years,
Indian Inhabitant, having his office
at 24, Aram Nagar No.1,
Pricnic Cottage, Versova,
Andheri (W), Mumbai 400 063 ....Appellant

V/s

The Commissioner of Custom,
(Exports Promotions), having his office at
3rd Floor, (Annexe Building),
New Custom House, Ballard Estate,
Mumbai 400 001. ....Respondent

****

Mr.Prakash Shah with Mr.Jas Sanghavi i/b PDS Legal for appellant.

Mr.Sham Walve with Ms.Maya Majumdar for respondent.

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CORAM : DHIRAJ SINGH THAKUR AND ABHAY AHUJA, JJ.

Date : 10th AUGUST 2022

PC :

1. With the consent of learned counsel for the parties, the appeals are taken up for final hearing at the admission stage itself.

2. These are the appeals under section 130 of the Customs Act, 1962 (hereinafter referred to as 'the Customs Act') against the order dated 12th March 2021 passed by the Customs Excise and Service Tax Appellate Tribunal, Mumbai ('CESTAT'), whereby the CESTAT by virtue of a common order, decided three appeals preferred by the appellant, arising out of the original order, dated 20th September 2007, passed by the Commissioner of Customs (Export Promotion) and while setting aside the impugned order, remanded the matter back to the said authority, for disposal of the issues, *inter-alia,* on the issue of limitation.

3. The following substantial questions of law have been proposed for our consideration :

> (a) Whether in the facts and circumstances of the case and in law, the Appellate Tribunal was justified in remanding the proceedings to the respondent to decide on the issue of limitation, when neither the appellant nor the respondent requested for remand of the proceedings?
>
> (b) Whether the Appellate Tribunal failed to exercise the jurisdiction conferred upon it under section 129B of the Customs Act in not deciding the appeal on the grounds raised by the appellant and remanding the proceedings to the respondent?
>
> (c) Whether in the facts and in the circumstances of the case and in law, the Appellate Tribunal was justified in not deciding the question of limitation and remanding the proceedings to the respondent, when

factual aspects were required to be examined to decide such question of limitation were already on record?

4. Briefly stated the material facts are as under :

(i) A show cause notice, dated 29th August 2005 was issued by the Commissioner of Customs (Export Promotion), Mumbai in terms of section 124 of the Customs Act in regard to over invoicing and fraudulent claim of duty drawback in violation of section 76 of the Customs Act received by the assessee on various dates in the years from 1995 to 1998.

(ii) The Commissioner of Customs (Export Promotion), Mumbai, by virtue of order dated 20th September 2007 confirmed the demands raised in the show cause notice, dated 29th August 2005.

(iii) This order was challenged by the appellants in three appeals before the CESTAT, *inter-alia* on the ground that the show cause notices which were issued in the year 2005 in regard to duty drawbacks, which were sanctioned as far back as in the year 1995 to 1998 were barred by limitation. Reliance in this regard was placed upon the judgment of Gujarat High Court in the case of ***Pratibha Syntex Ltd. vs.***

Union of India [1]

(iv) The CESTAT, by virtue of the order impugned dated 20th September 2007, after considering the contentions of the appellants that they had been denied an opportunity of cross-examination and after further considering the contention of the appellants that the show cause notices were barred by limitation, set aside the order passed by the Commissioner of Customs (Export Promotion), Mumbai and remanded the matter back to the original authority, *inter-alia,* on the ground that the impugned order did not reflect that the issue of limitation was considered by the Adjudicating Authority or that it was even raised before it.

The Tribunal held as under :

> "7 We find no record in the impugned order that the bar of limitation was considered by the adjudicating authority or that it was even raised before him. The appellant did not question the correctness of the valuation of export goods undertaken but did, nevertheless, seek cross-examination of certain persons which had been refused; in the light of the substantial delay between the exports and the initiation of proceedings for recovery, this aspect is relevant. Furthermore, in view of the decision of the Hon'ble High Court of Gujarat in ***Pratibha Syntex Ltd. vs. Union of India*** (Supra), it would be necessary for the adjudicating authority to first decide upon the

1 2013(287) ELT 290 (Guj.)

> aspect of limitation, before proceeding to consider the propriety of recovery of amounts paid in excess of prohibition of section 76 of Customs Act, 1962 on the basis of disclosure of the 'market price'.

5. Counsel for the appellant vehemently urged that the issue of limitation ought to have been gone into by the Tribunal itself instead of remanding the matter to the original authority especially when the dates of receipt of duty draw backs, as mentioned in the show cause notices were not disputed by the appellants.

Reliance was placed upon the judgments in the cases of ***Pratibha Syntex Ltd.*** (Supra); ***Parle International Limited Vs. Union of India & Ors.*** [2] and ***M.G. Shahani & Co. (Delhi) Ltd. Vs. Collector of Central Excise, New Delhi*** [3]. In case of ***M.G. Shahani & Co. (Delhi) Ltd.*** (Supra), the Hon'ble Supreme Court had rejected the prayer of the State for remanding the matter back to the Collector, in view of the presence of cogent and clear material on record, which could not have been controverted. It was held :

> *"5. The complaint by the appellant before us, for which we find sufficient justification, is that the*

2 2020 (100) TMI 842 (Bom.)
3 1994(73) E.L.T. 3 (S.C.)

> *Tribunal should have itself gone through the evidence and rendered a finding because all the relevant materials were before the Tribunal. To characterise the order of the Collector as laconic is not correct since he has written a detailed order including reference to the relevant case law. Thus, it is prayed, the order may be set aside and the Tribunal itself may be directed to decide the matter.*
>
> *....*
>
> *7 Having regard to the course which we propose to adopt there is no need to discuss the merit of the case. To our mind, it appears that the Tribunal has adopted an easy course in remitting the matter to the Collector. On the materials on record, being an appellate authority, the Tribunal itself should have analysed the evidence and given a factual conclusion. If this course had been adopted the decision could have been rendered in one way or the other. The remit was superfluous and the parties had argued at length. Therefore, we set aside the impugned order of the Tribunal and remit the matter to it. The Tribunal is directed to decide the issues involved on their merits. The appeal will stand disposed of in the above terms. However, there shall be no order as to costs.*

6. Reliance was also placed upon a judgment of this Court in the case of ***Commissioner of Central Excise, Pune-1 Vs. Syntel International (P) Ltd.*** [4] in which it was held that although the Tribunal exercises appellate powers and indeed had the power to remand the matter back to the Adjudicating Authority, yet, such an order was to be passed only if a remand was necessary and ought not to be exercised routinely and as a matter of course. It

4 2015(39) S.T.R. 27 (Bom.)

was further held that it was in the interest of public that matters concerning public revenue attain finality, expeditiously.

7. During the course of arguments, however, we were informed by learned counsel for the respondent that pursuant to the order of remand passed by the CESTAT, the Commissioner of Customs, (Export Promotion) had considered the entire issue in terms of the order of CESTAT and passed the final order dated 6th October 2021.

8. It needs to be clarified that although the present appeal was filed by the appellant in this Court on 17th September 2021, it had been listed before this Court for the first time on 27th July 2022, when the matter could not be taken up due to paucity of time, by which time, in any case, the Commissioner of Customs (Export Promotion) had already passed the order dated 6th October 2021 upon remand. Since there was no order passed in the present appeal staying the operation of the order impugned, the mere filing of the appeal or its pendency before this Court would thus by itself not be a legal impediment for passing the order dated 6th October 2021 upon remand.

9. Be that as it may, the directions having been already carried out and a detailed view having been already expressed by the original authority, in case the matter is considered in appeal by the Tribunal, it would have the benefit of the views expressed on the issues on which the matter stood remanded. At this stage, it would serve no fruitful purpose to hold that the Tribunal ought to have itself determined the issues instead of remanding the matter to save precious time.

10. Be that as it may, the orders impugned warrant no interference.

11. The appeals are accordingly dismissed with no order as to costs.

[ABHAY AHUJA, J.] **[DHIRAJ SINGH THAKUR, J.]**