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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/2/2024
IA NO.GA/1/2024, GA/2/2024

COMMISSIONER OF CUSTOMS(PORT)
KOLKATA
VS
JITENDRA C NAVLANI

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th April, 2024

Appearance :
Mr.Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
..for the appellant.

Dr. Sujay Kantawala, Sr. Adv.(VC)
Mr. Sajal Yadav, Adv.
Mr. Rajesh Upadhyay, Adv.
Mr. S. Dasgupta, Adv.
..for the respondent.

The Court : This appeal filed by the department is directed against the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Customs Appeal No.71290/2013 dated 10th May, 2023. The appeal was filed by the department before the learned Tribunal challenging the order passed by the Commissioner of Customs (Appeals) Kolkata.

The learned senior advocate appearing for the respondent raised a preliminary objection as regards maintainability of this writ petition by referring to section 130E of the Customs Act, 1962 (the Act). Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Bangalore-1 Vs. Motorola India Ltd. 2019 (368) E.L.T. 3 (SC). In the said decision the Hon'ble Supreme Court after referring to section 130E of the Act pointed out that upon a conjoint reading of the provisions it could be seen that an appeal shall lie to the High Court against every order passed by the Appellate Tribunal, if the High Court is satisfied with the case involves a substantial question of law. The only exception carved out is that an appeal shall lie before the Hon'ble Supreme Court and shall not lie before the High Court against the order relating to, amongst other things, to the determination of any question having relation to the rate of duty of customs or to the value of the goods for the purposes of assessment.

We have perused the Order-in-Original dated 29th January, 2013 and we find that the matter relates to the valuation of a car which was imported and the valuation adopted by the importer respondent was rejected by the adjudicating authority and the value was re-determined in terms of the provisions of the Customs Valuation Rules, 2007, read with the relevant provisions of the Act. The said order was appealed by the respondent importer and the appeal was dismissed by the Commissioner of Customs(Appeals), Kolkata.

Aggrieved by the same, the revenue preferred an appeal before the Tribunal and as rightly pointed out by the learned advocate appearing for the respondent that in the memorandum of grounds of appeal only question canvassed by the revenue was that the transaction value cannot be ascertained on the basis of any of the invoices submitted by either the dealer based in Dubai or the invoice raised in Japan. Therefore, the revenue sought to justify their stand setting aside that the value has to be ascertained as per the provisions of Rule 9 of the Customs Valuation Rules, 2007. The learned Tribunal by the impugned order has dismissed the appeal filed by the revenue holding that the adjudicating authority has held that the proposed value in the show cause notice is not acceptable and that the said order was not challenged by the revenue before any authority.

Further the learned Tribunal has affirmed the view taken by the Commissioner (Appeals) and held that the Commissioner rightly held that the value directed by the adjudicating authority is not acceptable in the absence of any other value of the said goods available at the time and, therefore, held that the declared value is to be accepted.

Thus, the matter concerns valuation of the imported goods and there is the clear bar of this Court in entertaining this appeal.

Accordingly, the appeal is held to be not maintainable before this Court.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/pkd/GH.
AR[CR]