2024:DHC:3542-DB

$~3

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

% Date of decision: 01.05.2024

CUSAA 92/2023 & CM APPL. 64467/2023

COMMISSIONER OF CUSTOMS ACC EXPORT ..... Appellant

versus

M S ARIHANT OVERSEAS ...... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Mr. Raghav Bakshi, Mr. Anand Pandey, Mr. Harsh Bhatia and Ms. Charu Sharma, Advocates.

For the Respondent: Dr. Seema Jain, Mr. Ajay K. Jain, Mr. Dushyant K Mahant and Mr. Vimlesh Kumar, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The subject appeal impugns order dated 25.05.2023, passed by the Customs Excise and Service Tax Appellate Tribunal (hereinafter, "the Tribunal"). The Tribunal had allowed the appeal filed by the respondent whereby a demand of drawback and order of confiscation of goods already exported under drawback were confirmed against the respondent.

2. The fulcrum of challenge in the appeal is the jurisdiction of the Tribunal to entertain the appeal filed by the respondent. Reliance is placed by learned counsel for the appellant on the decision of a coordinate Bench of this Court in *Commissioner of Customs, Air-Cargo Export vs. M/S Sans Frontiers* 2023 SCC OnLine Del 7913.

3. In *M/S Sans Frontiers (supra)*, the coordinate Bench of this Court had noticed contention on behalf of the Assessee that Revenue had agreed to the jurisdiction of the Tribunal to entertain the appeal. Similar contention is raised by the respondent herein that the Revenue had not objected to the jurisdiction of the Tribunal to entertain the appeal against the Order-in-Appeal.

4. In *M/S Sans Frontiers (supra)*, the Division Bench held that an order passed by a Court which did not have the subject matter jurisdiction to adjudicate the issue would be a nullity. No consent, waiver or acquiescence could confer jurisdiction upon a Court, which jurisdiction was otherwise barred by statute.

5. As per the appellant, in terms of Section 129 (DD) of the Customs Act, 1962 ["the Act"], the remedy of impugning the order was by way of a Revision to the Central Government and an appeal to the Tribunal was not maintainable. Said position is not disputed by learned counsel for respondent who concedes that in terms of Section 129 (DD) of the Act, the remedy was only by way of a Revision and

not by way of Appeal to the Tribunal. Learned counsel, however, submits that since the objection was not raised at an appropriate stage, respondent could not approach the Revisional Authority within the time prescribed by the statute. She submits that an opportunity be granted to the respondent to now file a Revision in terms of Section 129 (DD) of the Act before the Central Government.

6. In view of the above, the impugned order dated 25.05.2023 is set aside. An opportunity is granted to the respondent to prefer a Revision under Section 129 (DD) of the Act against the Order-in-Appeal dated 14.10.2022, passed by the Commissioner of Customs (Appeal) within a period of two months from today.

7. In case such Revision is filed by the respondent within two months, the same shall be decided by the Competent Authority on merits and shall not be dismissed on the ground of limitation.

8. Appeal is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 01, 2024/*VP*