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

CUSTOM APPEAL NO.54 OF 2024

Commissioner Of Customs Ns
III : Appellant.
Versus
Synergic Trailer And Auto
Solutions Pvt. Ltd. : Respondent

Mr. Karan Adik a/w. Mamta Omle , for the Appellant.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 30 JULY 2025

PC:- (Per M. S. Sonak, J.)

1. Heard Mr. Adik, learned counsel for the appellant.

2. The following substantial questions of law are raised in this appeal:

> *a) Whether in the facts and circumstances of the case was CESTAT correct in not considering the authority of Commissioner (Appeals) to pass necessary order after making further inquiry, confirming, modifying or annulling the decision or order appealed against as provided by Section 128-A(3) of Customs Act ?*
>
> *b) Whether in the facts and circumstances of the case was CESTAT correct in holding that findings in the Order in Original has attained finality even*

though the matter was before the appellate authority for determination in entirety ?

3. This appeal under Section 130 of the Customs Act 1962 (Customs Act) challenges the Tribunal's order dated 19 June 2023 remanding the matter to the Appellate Authority for a decision confined only to the issue raised by the respondent herein, in its appeal against the Adjudicating Authority's order dated 16 September 2016. This limited remand and disablement aggrieve the appellant to raise an issue of limitation before the Appellate Authority under the remand.

4. Mr. Adik states that powers of the Appellate Authority under Section 128A of the Customs Act are extensive, and even though the appellant may not have challenged the adjudicating Authority's findings on limitation, the appellant had the right and the Appellate Authority was imposed with the corresponding duty of considering this issue more so, since it was purely legal issue. Mr Adik referred to the provisions in Section 128A(3) of the Customs Act and emphasized on the expression *"after making such further inquiry as may be necessary"* to submit that Commissioner (Appeals) was justified in entertaining the appellant's plea of limitation even though, the appellant, may not have raised any challenge to the finding of the adjudicating Authority on the issue of limitation.

5. We have considered Mr. Adik's contention and perused the orders of the adjudicating Authority, Appellate Authority and the Tribunal, which have been placed on record.

6. In this case, the respondent applied for a refund to the

adjudicating Authority. In his order dated 16 September 2016, the adjudicating Authority specifically returned the finding that the refund application was filed within the prescribed period of limitation. Still, it rejected relief to the respondent based on its interpretation of the Board's Circular dated 29 April 2013, i.e. on merits.

7. The respondent, aggrieved by the adjudicating authority’s order dated 16 September 2016, which rejected the refund application not on the grounds of limitation but based on an interpretation of the Board's Circular, appealed to the Appellate Authority. The Appellate Authority, by its order dated 26 March 2018, upheld the adjudicating authority’s order, not only agreeing with its interpretation of the Board's Circular but also concluding that the refund application was barred by limitation.

8. The respondent aggrieved by the Appellate Authority’s order dated 26 March 2018 appealed to the Tribunal. The Tribunal held that the Appellate Authority exceeded its jurisdiction by holding that the respondent’s application for refund was barred by limitation because the finding to the contrary by the adjudicating Authority was never challenged by the appellant herein. The Tribunal held that the Appellate Authority could not have extended the scope of appeal and rendered the respondent’s position worse off before it appealed against the adjudicating Authority’s order.

9. Aggrieved by the Tribunal’s order dated 19 June 2023, to the extent it orders only a limited remand on the issue of interpretation of the Board's Circular and does not leave it

open to the Appellate Authority to consider the issue of limitation, the appellant has instituted this appeal.

10. Admittedly, the adjudicating Authority in this case had returned a positive finding that the refund application was within the prescribed period of limitation. The appellant did not challenge this finding. In the respondent's appeal, the Appellate Authority could not have reversed this finding. The provisions of Section 128A (3) of the Customs Act do not ordinarily empower the Appellate Authority to reverse findings favouring the appellant, in the absence of any challenge to such findings by the respondents. The expression "after making such further inquiry" is not broad enough to ordinarily empower the Appellate Authority to undertake any such exercise. The finding on limitation, favoring the Respondent herein, involved a mixed question of law and fact.

11. The two provisos to Section 128A (3) deal with the power of the Appellate Authority to enhance any penalty or to deal with issues of short levy or erroneous refunds. The Legislature has specifically conferred such powers on the Appellate Authority, and that too, subject to compliance with certain pre-conditions.

12. The fact that the Legislature needed to enact specific provisions for increasing penalties or addressing issues of short levy or erroneous refunds indicates that, under the main clause to which these provisos relate, there was no authority to reverse findings in the appellant's favour without contesting those findings. If the main provision was as broad as Mr Adik claims it was, then perhaps there was no need for such

provisos to explicitly grant powers to enhance penalties or manage issues of short levy or erroneous refunds.

13. Thus, the Tribunal’s view that the Appellate Authority has exceeded its powers cannot be faulted and gives rise to no substantial question of law. The Tribunal, in this case, was accordingly justified in ordering a limited remand, further clarifying that the Appellate Authority must now confine itself only to the issue of interpretation of the Board's Circular, i.e. on merits and not on limitation.

14. For the above reasons, we decline to admit this appeal and dismiss the same without any costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**