OD 25 & 26

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/28/2025
IA NO: GA/1/2025, GA/2/2025

COMMISSIONER OF CUSTOMS PORT KOLKATA
VS
M/S EMAMI AGROTECH LTD.

WITH

CUSTA/29/2025
IA NO: GA/1/2025, GA/2/2025

COMMISSIONER OF CUSTOMS PORT KOLKATA
VS
M/S EMAMI AGROTECH LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 15th January, 2026.

Appearance:
Ms. Manasi Mukherjee, Adv.
Mr. Bijitesh Mukherjee, Adv.
...for the appellant

Mr. Rahul Dhanuka, Adv.
Mr. Niraj Baheti, Adv.
...for the respondent

The Court: We have heard learned counsel for the parties.

There is a delay of 455 days in filing the appeals. We are satisfied with the explanation offered for not preferring the appeals within time. Therefore, the delay is condoned. The applications being GA 1 of 2025 filed in both the appeals are allowed.

Learned counsel appearing for the appellant suggests the following substantial questions of law by filing the appeals under Section 130 of the Customs Act, 1962.

> “I. Whether the Hon’ble Tribunal erred in not interpreting the relevant provision of FTP, MEIS which states that, Scrips are granted as rewards/incentives to exporters for payment of Basic Customs Duty and Additional Customs Duty, specified under sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975, for import of inputs or goods & for payment of Central Excise duties on domestic procurement of inputs or goods.
>
> II. Whether the Hon’ble Tribunal erred in not considering the CBIC Circular No.02/2020 dated 10.01.2020 that deals with those exemption where the duty is debited through Scrips i.e. duty is not absolutely exempted but paid through other mode, whereas, Circular No.03/2022 dated 01.02.2022 does not mention any such MEIS Scrips, but deals with those notifications, either with unconditional exemption or with pre-import or post-import conditions, like coo benefits/import

through advance/DFIA/DEPB/EPCG licenses, etc, where the whole or the part of the duty is not levied, but is put in the duty foregone heading for compliance of export obligations.

III. Whether goods that are fully exempted from excise duty/customs duty or are cleared without payment of excise duty/customs duty (such as clearance under bond or fulfillment of certain conditions) would be subjected to cess."

Section 130 of the Customs Act 1962 speaks of appeal to High Court which is quoted below:-

"130. Appeal to High Court. – (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The [Principal Commissioner of Customs or Commissioner of Customs] or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the [Principal

Commissioner of Customs or Commissioner of Customs] or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]"

The Customs Act, 1962 also speaks of appeal to Supreme Court which is quoted below:-

"130E. Appeal to Supreme Court. – An appeal shall lie to the Supreme Court from –

[(a) any judgment of the High Court delivered –

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

[(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.]"

On perusal of Sections 130 and 130E of the Customs Act, 1962 in our opinion, this appeal should be preferred before the Hon'ble Supreme Court under Section 130E of the Act.

The appeals and the connected applications preferred by the department is dismissed.

Leave is granted to the learned advocate-on-record of the appellant to receive certified copy of the tribunal from the department and replace it with a photocopy of the same.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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