OD – 28

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

CUSTA/99/2026
IA NO: GA/1/2026
A S CHATTHA EXIM PVT LTD
VS
COMMISSIONER OF CUSTOMS (PORT)

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE SUDIP DEB
Date: 12th October, 2026.

Appearance:
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Ms. Saakshi Shaw, Adv.
…for appellant.

The Court: Heard learned counsel for the appellant.

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.

"(a) Whether the Hon'ble CESTAT was justified in law in upholding the assessment under CTH 34039100 without properly considering the material evidence on record, particularly the National Test House (Eastern Region) Test Certificate No. NTH (ER)/CH(S)/2018/00228 dated 18.09.2020, the order dated 11.02.2020 passed by the West Bengal Commercial Taxes Appellate and Revisional Board in Revision (VAT) Case Nos. 1790 & 1791 of 2018-2019 in support of classification under CTH 32021000?

b) Whether, in the facts and circumstances of the case, the Hon'ble CESTAT erred in law in failing to appreciate that the order of the learned Commissioner (Appeals),

whereby the earlier assessment was set aside and the matter was remanded for fresh examination, was binding upon the Original Authority, particularly when the Revenue's challenge to the said appellate order had itself been dismissed by the Hon'ble Tribunal vide Final Order No. 76794/2019 dated 28.11.2019, in view of the principles of judicial discipline laid down by the Hon'ble Supreme Court in Union of India v. Kamlakshi Finance Corporation Ltd., 1991 Supp. (1) SCC 443?

c) Whether the Learned CESTAT erred in law in permitting the Original Authority to question or indirectly nullify the earlier order of the learned Commissioner (Appeals) by proceeding on the premise that the said appellate order had been obtained by misrepresentation or by allegedly misleading the appellate authority, notwithstanding that the Original Authority had no jurisdiction to sit in appeal over the order of its superior appellate authority?

d) Whether, in view of the law laid down by the Hon'ble Supreme Court in ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV 2019 (368) E.L.T. 216 (SC), holding that an order of self-assessment constitutes an assessment order and is appealable by a person aggrieved thereby, the Learned CESTAT was justified in dismissing the Appellant's challenge to the assessment/classification without adjudicating the substantive dispute regarding the correct classification of the imported goods and the consequential duty liability?

e) Whether the Hon'ble CESTAT erred in law in permitting the Original Authority to question or indirectly nullify the earlier order of the learned Commissioner (Appeals) by proceeding on the premise that the said appellate order had been obtained by misrepresentation or by allegedly misleading the appellate authority, notwithstanding that the Original Authority had no jurisdiction to sit in appeal over the order of its superior appellate authority?

f) Whether, in view of the law laid down by the Hon'ble Supreme Court in ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (SC) holding that

an order of self-assessment constitutes an assessment order and is appealable by a person aggrieved thereby, the Hon'ble CESTAT was justified in dismissing the Appellant's challenge to the assessment/classification without adjudicating the substantive dispute regarding the correct classification of the imported goods and the consequential duty liability?

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 appeal [CUSTA/99/2026] and the connected application IA. GA/1/2026 preferred by the department are 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.)

(SUDIP DEB, J.)

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