AFR

Court No. - 45

Case :- CUSTOM APPEAL No. - 163 of 2017

Appellant :- Commissioner Of Central Excise & Service Tax, Lucknow
Respondent :- Aimr Jewels Pvt. Ltd. Agra
Counsel for Appellant :- Krishna Agarawal
Counsel for Respondent :- Mohit Behari Mathur

Hon'ble Pankaj Mithal,J.
Hon'ble Vinod Kumar Misra,J.

Short counter affidavit, filed on behalf of the respondent annexing the documents as required by the order dated 29.05.2017, is taken on record.

The Commissioner of Central Excise and Service Tax, Lucknow has preferred this appeal under Section 130 of the Customs Act, 1962 against the order dated 20.01.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

Apart from the various grounds taken in the memo of appeal and substantial questions raised therein, an additional point has been argued that the impugned order passed by the CESTAT is without jurisdiction inasmuch as it has been passed by a judicial member only and not by the Bench as envisaged under Section 129C of the Act.

We gave opportunity to the respondent, who is duly represented by Sri Mohit Bihari Mathur to address us on the above aspect.

We have heard Sri Navin Sinha, Senior Counsel for the respondent as to whether the impugned order of the CESTAT is without jurisdiction and in breach of provisions of Section 129C of the Act.

Section 129C of the Act lays down the procedure to be followed by the CESTAT in deciding appeals preferred before it.

It provides that the powers and functions of the CESTAT are to be exercised and discharged by the Benches as constituted by the President from amongst the members thereof and that the Bench shall consist of one judicial member and one technical member subject to Sub-section 4 thereof.

Sub-section 4 of Section 129C of the Act reads as under:-

(4) The President or any other member of the Appellate Tribunal authorized in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where --

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine, or penalty involved;

does not exceed fifty lakh rupees.

A bare reading of the aforesaid provisions inter alia demonstrates that any case, which is assigned to a Bench can be decided by one of the members sitting singly if the value of the goods confiscated without option of redemption under Section 125 does not exceed Rs.50 lakhs.

In other words, if the value of the goods confiscated without right of redemption exceeds Rs.50 lakhs, a single member of the CESTAT is not competent to decide the appeal in respect thereof.

The order of the Adjudicating Authority, from which the appeal was preferred before the CESTAT reveals that the value of the goods confiscated was Rs.3,36,00,000/- and the confiscation was without any option to redeem the same under Section 125 of the Act.

In view of the valuation of the goods confiscated without right to redeem, the appeal was not cognizable by a single member of the CESTAT.

In view of the above, the question of law, as framed above, is answered in favour of the Customs Department and against the respondent and it is held that the impugned order passed by single member of the Tribunal is without jurisdiction and in violation of Section 129C of the Act. It is accordingly set aside and the matter is remanded to the CESTAT for decision afresh on merits in accordance with law preferably within a period of three months from today.

Order Date :- 30.5.2017
Nadim