COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, GOA

v.

M/S ADANI EXPORTS LTD.

(Civil Appeal No. 6021 of 2009)

FEBRUARY 11, 2020

[R. F. NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.]

Customs Act, 1962: s.130A (1) and (4) – High Court is not mandatorily obligated to call for a statement from the Tribunal in every case before deciding application under s.130A – A reading of s.130A (1) and (4) makes it clear that if the Commissioner of Customs or other party within the prescribed period of limitation applies in the prescribed form to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal, the High Court may do so – Thus, High Court has a discretion on the facts of each case either to do so or not to do so.

Disposing of the appeals, the Court

HELD: The High Court is not mandatorily required to call for a statement from the Tribunal in every case, where a reference is made. This is so because of the language of Sub-Section 4 which opens with an 'if'. A reading of Section 130A (1) & (4) would make it clear that if the Commissioner of Customs or other party within the prescribed period of limitation applies in the prescribed form to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal, the High Court may do so. What is clear on a reading of sub-section (4) is that the High Court has a discretion on the facts of each case either to do so or not to do so. This becomes absolutely plain from the first word in sub-section (4), namely, "if". There is nothing in the language of Section 130A which first mandatorily obliges the High Court to call for a statement from the Tribunal before deciding any such application. [Paras 2, 3] [889 E-H; 890-A]

A *Commissioner of Customs, Bangalore v. Central Manufacturing Tech. Institute* **2002 (146) ELT 27 – overruled.**

Case Law Reference

B **2002 (146) ELT 27 overruled Para 3**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6021 of 2009.

From the Judgment and Order dated 09.12.2003 of the High Court of Bombay at Goa in Reference Application Under Customs Act No. 2 C of 2003.

With

Civil Appeal Nos. 6072-6073 of 2009.

K. Radhakrishnan, Tarun Gulati, Arijit Prasad, Sr. Advs., Ms. Shirin D Khajuria, B. Krishna Prasad, Ejaz Maqbool, Ms. Tanya Shree, Muhammad Isa M. Hakim, Ms. Aishwarya Sarkar, Kumar Visalaksh, Udit Jain, Mrs. Bina Gupta, Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

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1. Having heard Mr. K. Radhakrishnan, learned Senior Counsel appearing on behalf of the Revenue for sometime and after perusing the reference order to a larger Bench dated 14.03.2018, it is first necessary to set out Section 130A(1) & (4) of the Customs Act.

F "130A. Application to High Court.- (1) The Commissioner of Customs or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 129B passed before 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 G to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal."

H

(4) If, on an application made under sub-Section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court."

2. Mr. K. Radhakrishnan referred to an order of 2 learned Judges of this Court in *Commissioner of Customs, Bangalore* v. *Central Manufacturing Tech. Institute* reported in 2002 (146) ELT 27 which reads as under:

"1. Leave granted. The High Court rejected an application for reference of the question of law arising from the order of CEGAT and the High Court agreed with the view taken by the Tribunal and disposed of the matter stating that the question of law does not arise from the order of CEGAT. That was not the stage at which the High Court could have expressed its views on merits of the matter and the appropriate course for the High Court was to call for a statement and then decide the matter in an appropriate manner as provided under the law.

2. In that view of the matter, we set aside the order made by the High Court and remit the matter to the High Court for fresh examination. The appeal is allowed accordingly."

We do not find anything in the text of Section 130A which implies that the High Court is mandatorily required to call for a statement from the Tribunal in every case, where a reference is made. We say so because of the language of Sub-Section 4 which opens with an 'if'.

3. A reading of Section 130A (1) & (4) would make it clear that if the Commissioner of Customs or other party within the prescribed period of limitation applies in the prescribed form to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal, the High Court may do so. What is clear on a reading of sub-section (4) is that the High Court has a discretion on the facts of each case either to do so or not to do so. This becomes absolutely plain from the first word in sub-section (4), namely, "if". We find nothing in the language of Section 130A which first mandatorily obliges the High Court to call for a statement from the Tribunal before

A deciding any such application. The judgment in *Commissioner of Customs, Bangalore (supra)* being incorrect is therefore overruled.

4. The question is answered accordingly and the appeals stand disposed of.

Devika Gujral Appeals disposed of.