IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/41088,41089/2019

[arising out of Order-in-Original No.129/2019 - ACIU, dated 14.02.2019 passed by the Joint Commissioner of Customs, Chennai -VII]

RISHI NAKHAT — APPELLANT/S
RAVI NAKHAT

Versus

COMMISSIONER OF CUSTOMS (AIR CARGO), — RESPONDENT
CHENNAI - VII

Appearance:

For the Appellant	Shri R.N. Bandyopadhyay, Cons.,
For the Respondent	Ms. T. Ushadevi, DC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Date of hearing/decision **22-07-2019**

FINAL ORDER NOs. **40944 - 40945 / 2019**

The above appeal has come up for hearing as per published cause list.

2. On behalf of the respondent, the learned Authorised Representative for the Revenue Ms. T. Ushadevi, DC (AR) raised the preliminary objection stating that the appeal is not maintainable before

the Tribunal. She adverted to section 129A of the Customs Act, 1962 and submitted that only when the order is passed by Commissioner of Customs or Commissioner (Appeals) an appeal would lie before the Tribunal. In the present case, the order is passed by Joint Commissioner (Customs) and the appellants ought to have approached the Commissioner (Appeals) before filing the appeal before the Tribunal. She, therefore, submitted that the appeal has to be dismissed *in limini*.

3. Learned Consultant for the appellants Shri R.N. Bandyopadhyay appeared on behalf of the appellant. He adverted to the preamble of the Order-in-Original and argued that as per clause 1(b), the department has directed the appellant to file appeal before the Tribunal and in obedience of this preamble, the appellant has filed appeal before the Tribunal.

4. On going through the Order-in-Original, it is seen that the impugned order is passed by Joint Commissioner of Customs. The appellants ought to have filed appeal before the Commissioner (Appeals). However, the preamble states that the appellant has to file the appeal before the Tribunal. This might have occurred by including a wrong preamble in the Order-in-Original passed by the Joint Commissioner. Appeal from order that is passed by the Joint Commissioner (Customs) lies before Commissioner (Appeals) only. Hence, this appeal is dismissed for want of jurisdiction.

5. However, liberty is given to the appellant to approach the Commissioner (Appeals), who shall consider the period of limitation for filing appeal before him by excluding the time taken by the appellant to prosecute the appeal before the wrong forum. The pre-deposit of

7.5% deposited before the Tribunal shall also to be considered as sufficient compliance of pre-deposit before the correct appellate forum. The appeals are disposed off in the above terms.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

ksr
23-07-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	22.07.2019			
Draft Order - Date of typing	22.07.2019			
Fair Order Typing	23.07.2019			
Date of number and date of dispatch	23.07.2019			