CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 52184 OF 2019

[Arising out of Order-in-Appeal No. (A) CUS/DI/ NCH/EXPORT/228/201 9-20 dated 31.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

CARGO PLANNERS LIMITED **Appellant**
A-191, Mahipalpur Extension,
NH-8, New Delhi.

Vs.

COMMISSIONER OF CUSTOMS (GENERAL) ,NEW DELHI **Respondent**
New Customs House, IGI Airport,
New Delhi

Appearance:
Present for the Appellant :Shri Sohan Badhopadhyay, Advocate
Present for the Respondent:Shri Gopi Charan, Authorized Representative

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision : **12/09/2022**

<u>FINAL ORDER NO. 50868/2022</u>

DR. RACHNA GUPTA

The directions in the order dated 3rd August, 2022 stands complied with. However, ld. Counsel for the appellant has reiterated the submissions that the appellant's company is in liquidation and as per order dated 08.08.2019 passed by NCLT, Principal Bench, New Delhi, Interim Resolution Professional has been appointed. It is also brought to notice today that moratorium has already been issued.

2. Keeping in view the said submission and the mandate of statute under Indian Bankruptcy Code the present appeal is held to have abated. I draw my support from the decision of Hon'ble Apex Court in the case of **Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs in Civil Appeal No.7667 of 2021 dated August 26, 2022 reported in 2022 LiveLaw (SC) 715** held as follows:-

> *"Insolvency and Bankruptcy Code, 2016; Section 14 - Moratorium on the initiation of CIRP proceedings and its effects - One of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor. This is done in order to provide the Corporate Debtor with breathing space, to allow it to continue as a going concern and rehabilitate itself"*

3. The Hon'ble Apex Court has also clarified that once moratorium is imposed under IBC the Custom Authority being having limited jurisdiction will have no further power to initiate recovery. Hence, it is the order under IBC and the provisions of IBC which, shall prevail over Customs Act.

4. In view of the said observations and the intent of Legislature, the present appeal is hereby disposed of as being abated.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita