CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30266 of 2018

(Arising out of **Compounding Order No.07/2017-CUS** dated 02.02.2017 passed by Chief Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Khan Sadaf .. **APPELLANT**
D/o Mohammed Salim Khan,
R/o H.No. 8-20686/2/6/1/A,
2nd & 3rd Floor, Road No. 12,
Banjara Hills,
Hyderabad,
Telangana – 500 034.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – GST
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri G. Vidyadhar Reddy, Consultant for the Appellant.
Shri A. Rangadham, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30039/2023

Date of Hearing:05.04.2023
Date of Decision:05.04.2023

[ORDER PER: R. MURALIDHAR]

The Learned Advocate appearing on behalf of the Appellant submits that they have came before this Tribunal being agitated by the compounding order No. 07/2017-CUS dated 02.02.2017 passed by the Chief Commissioner of Customs. He also explains in detail the chronological events in respect of the Compounding Order passed by the Chief Commissioner. The Appellant approached the Hon'ble High Court of Telangana on the ground that proper justification was not done by the Adjudicating Authority (The Chief Commissioner) while passing the Order. The Hon'ble High Court in their Order in Writ Petition No. 8349/2017 dated 02.11.2017 held that Petitioner should file an appeal before the CESTAT and to approach the Tribunal against the Chief Commissioner's order. Agitated by this order, the Department filed a Review Petition IA No. 01/2018 before the Hon'ble High Court on the ground that Tribunal CESTAT has no jurisdiction to hear the Appeal against the Order passed by Chief Commissioner in terms of Section 129A of the Customs Act, 1962. The Hon'ble High Court vide their order dated 14.11.2018 have also held as under:

> This application is filed for reviewing order, dated 02/11/2017, in writ petition No. 8349 of 2017.
>
> By the afore-mentioned order, on the representation of the learned senior Standing counsel for the Union of India that an appeal lies against the order impugned in the Writ Petition to the Customs, Central Excise and Service Tax Tribunal (for short the CESTAT) under Section-129 A of the Customs Act, 1962 (for short; the Act), we have dismissed the said Writ Petition permitting the petitioner to file an appeal.
>
> Now, the Union of India and another have filed this Review application on the ground that an adjudication order passed by the Chief Commissioner is not assessable to appeal under Section-129A of the Act.
>
> Through prima facie, we are not impressed by the submissions of the learned senior Standing Counsel, we leave the issue as to the maintainability of the appeal to be decided by the CESTAT while deciding the appeal.

2. In view of the above order passed by the Hon'ble High Court on 14.11.2018, the Learned Counsel appearing for the Appellant submits that the Tribunal should take up the appeal and pass an order holding that the Compounding Order passed by the Chief Commissioner is not legal and proper. He also relies on the judgment of Gujarat High Court in the case of **Commissioner of Central Excise Vs Girish B. Mishra [2016 (339) ELT 67-Guj]** wherein the same issue was before the Hon'ble High Court, where the Department had filed their appeal against the order of the Tribunal deciding the appeal filed against the Compounding Order passed by the Chief Commissioner. The Learned AR submits that in terms of Section 129A (1), the appeals can be filed before the Appellate Tribunal only when the Appellant agitates the orders passed by the Principal Commissioner of Customs, or Commissioner of Customs as an Adjudicating Authority (Section 129A(1)(a)). In the present case, the Compounding Order have been

passed by the Chief Commissioner who does not fall under the definition of Adjudicating Authority under Section 129A(1)(a).

3. Heard both sides and perused the documents.

4. From the order passed by the Hon'ble Telangana High Court cited supra, it is seen that the High Court has not taken any view that Tribunal does not have jurisdiction to decide the Appeal. On the other hand, the maintainability of appeal has been allowed to be decided by the Tribunal itself. From the judgment of Gujarat High Court in the case of **Commissioner of Central Excise Vs Girish B. Mishra** cited supra, it is observed that the very issue was before the Hon'ble Gujarat High Court. The Hon'ble High Court did not entertain the Appeal filed by the Revenue on the issue of jurisdiction of the Tribunal while deciding the appeal filed against Compounding Order passed by the Chief Commissioner. At this juncture, the Learned AR submits documents to the effect that the Revenue has filed an SLP against the Gujarat High Court decision before the Hon'ble Supreme Court. On a query as to whether the Gujarat High Court order has been stayed or overturned by the Supreme Court as on date, he submits that as of now only the SLP has been filed.

5. Based on the Order passed by the Hon'ble Telangana High Court as well as the decision of the Hon'ble Gujarat High Court, which is in force as on date, we find that the appellant requires to be given an opportunity once again to go before the Chief Commissioner/ Principal Chief Commissioner.

6. Accordingly, the matter is remanded to the Chief Commissioner/ Principal Chief Commissioner who will give opportunity to the Appellant to make all their oral and written submissions along with documentary evidence and follow principles of natural justice while deciding the matter. He will also follow the guidelines issues by CBIC vide their Circular No. 15/2022-CUS dated 23.08.2022 while deciding the matter.

7. We are also making it clear on merits we are not expressing any opinion. Since the matter pertains to 2014 the Chief Commissioner/ Principal Chief Commissioner is directed to complete the entire process within 4 months from the date of receipt of the communication of this Order.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

jaya