CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87153 of 2015

(Arising out of Order-in-Original No. CC-RS/07/2014-15 dated 04.07.2015 passed by the Commissioner of Customs (Import), Air Cargo Complex, Mumbai.)

Bombay Hospital Trust **.... Appellant**
Medical Research Centre of Bombay Hospital Trust,
12, New Marine Lines, Mumbai- 400 020.

Versus

Commissioner of Customs, ACC Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East),
Mumbai- 400 099.

With

Customs Appeal No. 87063 of 2016

(Arising out of Order in F. No. SIIB/Gen-56/98 ACC dated 22.04.2016 passed by the Deputy Commissioner of Customs, SIIB, Air Cargo Complex, Mumbai.)

Medical Research Centre of Bombay Hospital Trust **.... Appellant**
12, New Marine Lines, Mumbai- 400 020.

Versus

Commissioner of Customs -III (Air Cargo Complex), Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East),
Mumbai- 400 099.

Appearance:

Shri Akhilesh Kangsia a/w Shri T. Vishwanathan, Advocates for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85758-85759/2024

Date of Hearing: 30.07.2024

Date of Decision: 30.07.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Feeling aggrieved with the order dated 04.07.2015 passed by the learned Commissioner of Customs (Imports), Mumbai and the order dated ---.04.2016 of the Deputy Commissioner of Customs SIIB(I), ACC, Sahar, Mumbai, the appellants have preferred these appeals before the Tribunal. Insofar as the order dated 04.07.2015 passed by the learned Commissioner of Customs (I) is concerned, the said order has not quantified the demand payable by the appellants and for quantification of the demand, he had directed the Deputy Commissioner for the said purpose and accordingly, the Deputy Commissioner in his order dated ---.04.2016 has computed the duty demand. Sub-section (1) of Section 129A of the Customs Act, 1962 provides the reference of various orders, which can be appealed against before the Appellate Tribunal. The said statutory provisions mandate that the orders passed by the Principal Commissioner of Customs or the Commissioner of Customs, Commissioner (Appeals) and the Board may be appealed against before the Appellate Tribunal. No where it has been prescribed under Section 129A ibid that order passed by the officer, lower in rank than the Commissioner discharging various functions, can be appealed against before the Appellate Tribunal. Section 28 ibid deals with the provisions for recovery of non-levy, short levy, non-payment, short payment of duty. The proper officer under the statute has been vested with the power for issuance of the show cause notice, calling upon the person to show cause as to why, the amount should not be recovered from him. Sub-section (8) of Section 28 *ibid* provides that the proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice. On reading of the said sub-section, it is manifestly clear that the proper officer who has been assigned with the task of adjudication, should himself adjudicate the matter and also determine the duty and other demand liable to be confirmed against the person concerned. In the present case, since the

Principal Commissioner of Customs in the order dated 04.07.2015 has himself not quantified the demand and assigned such task to the Deputy Commissioner of Customs, we are of the view that both the orders passed by the authorities below cannot be sustained in terms of the mandates provided under the Customs Act, 1962. Therefore, we are of the view that the appeal filed against the order ---.04.2016 passed by the Dy. Commissioner of Customs SIIB(I), Mumbai should be dismissed on the ground of jurisdiction. Accordingly, the said order passed in quantifying the duty demand by the Deputy Commissioner is dismissed as not maintainable before the Tribunal. With regard to the order dated 04.07.2015 passed by the Commissioner of Customs (Import), we find that the duty and other demands confirmed by him on the appellants have not been quantified therein. Since, sub-section (8) of Section 28 *ibid* in clear terms provide that the proper officer should quantify the duty demand, we are of the view that the order dated 04.07.2015 cannot be legally sustainable inasmuch as the adjudged demands have not been quantified and confirmed therein. In this regard, we find that the Tribunal in the case of *Gujarat State Export Corporation Vs. Commissioner of Customs, Ahmedabad* – 2000 (122) E.L.T. 632 (Tribunal) has dealt with an identical case and has held that the adjudicating authority himself should determine the duty demands and accordingly, remanded the matter to the proper officer for quantifying the demand, payable by the appellant involved therein.

3. In view of the foregoing discussions, the impugned order dated 04.07.2015 passed by the learned Commissioner of Customs (I) is set aside and the appeal is allowed by way of remand. It is made clear that all the issues involved in these appeals are open, which should be addressed to by the adjudicating authority while quantifying the duty demand against the appellants. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

4. In the result, Appeal No. C/87063/2016 is dismissed on the ground of jurisdiction and the appeal being No. C/87153/2015 is set aside and the appeals are allowed by way of remand.

(Order dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM