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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-26-1985

Reported in : (1987)(32)ELT341TriDel

Appellant : Collector of Customs

Respondent : Boota Mal and Sons

Judgement :

1. This application under Section 130(1) of the Customs Act [the section is incorrectly mentioned as 131(1) in the application] is by the Collector of Customs, New Delhi, the respondent in the appeal, for making a reference to the Hon'ble High Court, Delhi of a question of law said to arise out of the order of this Tribunal dated 6-8-1984 in the appeal.

2. The appeal itself had been received on transfer from the Government before whom it had been pending on the appointed date as a Revision Petition preferred by the respondents to this application. When the appeal was taken up, the Departmental Representative had pointed out that in So far as the penalty levied was less than Rs. 10,000/- the Revision Petition should have been retained by the Government itself for disposal in view of the provisions of the proviso 2 to Section 131B(2) of the Customs Act. He had made the said submission in view of the earlier decision of this Tribunal reported in 1983 ELT 2517. Since the learned counsel for the appellants also did not raise any objection to that position the Tribunal had ordered that following the decision cited supra and in view of the provisions of Section 131B(2) of the Customs Act, the papers be retransferred to

the Government for disposal.

3. The Applicant Collector has prayed for a reference to the High Court of the question of law suggested by him to the effect that the Tribunal was not right in ordering the retransfer since the redemption fine was more than Rs. 10,000/- though the penalty was less than Rs. 1Q,000/-.

4. But Sri C.L. Beri, Advocate for the respondents in this application raises a contention that no such application under Section 130 of the Customs Act would lie in the present instance. He points out that under Section 130 an application for reference could be made if the order giving rise to the question of law had been passed under Section 129B. His submission is that an order under Section 129B would be one under which the order appealed against is either confirmed or modified or annulled or the proceedings are referred back to the authority which passed the order appealed against. He therefore contends that since under the order dated 6-8-1984 a retransfer of the papers to the Government had been ordered the said order would not be one contemplated under Section 129B. We have heard Sri C.L. Beri, Advocate on the said contention and also Sri Raghavan Iyer, OSD representing the department.

5. As Sri Beri points out a reference could be made under Section 130 of the Customs Act to the concerned High Court if the question of law to be referred to the High Court arises out of an order passed under Section 129B. The order now under consideration had merely directed retransfer of the papers to the Government on the basis that under Section 131B(2) of the Customs Act the proceedings which were pending before the Government on the appointed date were not such as were required to be transferred to this Tribunal under the said Section.

Therefore when a retransfer was ordered the proceedings (preferred by way of a Revision Petition to the Government and transferred to this Tribunal for disposal as an appeal) were not disposed of either by way of confirmation, modification or annulment of the order appealed against or by a remand to the original adjudicating authority after setting aside the order under appeal. Therefore, the said order dated 6-8-1984 would not be one contemplated under Section 129B of

the Customs Act.

6. In the circumstances we hold that no reference application under Section 130 of the Customs Act lies with reference to the said order dated 6-8-1984. The application is accordingly dismissed.

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