(2014) 07 GUJ CK 0146

In the Gujarat High Court

Case No : Tax Appeal No. 390 of 2012

Commissioner of Customs — APPELLANT

Vs

Kobian Electronics (India) P. Ltd. — RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:
Customs Act, 1962 — Section 129A, 129E, 130, 131C, 131C(b)

Citation : (2015) 30 GSTR 504

Hon'ble Judges : M.R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : R.J. Oza, Advocates for the Appellant; Anand Nainawati, Advocates for the Respondent

Judgement

M.R. Shah, J.—Present tax appeal under section 130 of the Customs Act, 1962 has been preferred by the appellant-the Commissioner of Customs, Ahmedabad, being aggrieved by and dissatisfied with the impugned judgement and Order Nos. A/39/WZB/AHD/2012, S/105/WZB/AHD/2012, dated January 9, 2012 in Central Excise Appeal No. C/3/2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad to consider the following substantial question of law :

"Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in giving liberty to the respondent to comply with requirement of section 129E of the Customs Act, 1962 to deposit with the proper officer the amount specify in the Tribunal''s order by utilising Cenvat credit accumulated in its account under the Cenvat Credit Rules, 2004 by cash through TR-6 challan to pursue appeal under section 129A of the Customs Act, 1962?"

Though the present appeal had been previously admitted, Mr. R.J. Oza, learned counsel appearing on behalf of the Revenue has candidly pointed out that the respondent-assessee is located at Dadra Nagar Haveli. In that view of the matter, he rightly points out that the appeal could not be competent before this court.

2. In view of the fact that the respondent is situated within the union territory of Dadra and Nagar Haveli by virtue of the provisions of section 131C of the Customs Act, 1962, the appeal would be competent before the High Court of Bombay.

3. We notice that section 131C(b) defines the term "High Court" and "High Court" means in relation to the union territories of Dadra and Nagar Haveli (Daman and Diu), the High Court at Bombay.

4. At this stage it is required to be noted that as such section 131C(b) has been omitted by section 30 read with schedule to the National Tax Tribunal Act, 2005 (49 of 2005), however, from a date to be notified. It is reported that till date, no such date has been notified. Under the circumstances, the provisions of section 131C(b) of the Customs Act would stand. In view of the above, the present appeal before this High Court would not be maintainable. Under the circumstances, the present appeal is disposed of as not maintainable before this High Court. Registry is directed to return the memo of the present tax appeal along with all the annexures, after keeping xerox copy of the same with the registry, to the appellant so as to present it before the concerned High Court having territorial jurisdiction, i.e., in the present case, Bombay High Court.