

(2013) 02 CAL CK 0016
In the Calcutta High Court
Case No : F.M.A.T. No. 668 of 2007

O.T.A. Falloons Forwarders (P) Limited	APPELLANT
Vs	
Customs, Excise and Service Tax Appellate Tribunal	RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 3 CHN 153

Hon'ble Judges : Subhro Kamal Mukherjee, J;Asim Kumar Mondal, J

Bench : Division Bench

Advocate : Shyamal Chakraborty and Swarup Kumar Ghosh, for the Appellant; Syama Prasanna Roy Chowdhury, Amicus curiae, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against Order dated June 25, 2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata Eastern Zonal Bench, Customs Appeal No. 152 of 2006. Mr. Shyamal Chakraborty, learned advocate appearing for the appellant, submits that since u/s 130 of the Customs Act, 1962, an appeal shall lie to the High Court from every Order passed in appeal by the Appellate Tribunal, hearing under Order 41, Rule 11 of the CPC of this appeal is not necessary.

2. We requested Mr. Syama Prasanna Roy Chowdhury, learned senior advocate, to assist the Court as amicus curiae. Mr. Roy Chowdhury, according to the best tradition of the Bar, readily accepted the request.

3. Mr. Roy Chowdhury, learned senior advocate, appearing as amicus curiae, draws our attention to Rule 17 of Chapter V of the Appellate Side Rules and submits that the appeal must be placed for hearing under Order 41 Rule 11 of the Code of Civil Procedure.

4. We accept the contention of Mr. Roy Chowdhury that only in respect of the appeals referred to in sub-Rule (a) of Rule 17 of the said Rules, it is not necessary that those appeals be placed for hearing under Order 41 Rule 11 of the CPC and, therefore, all other appeals are to be placed for hearing under

Order 41, Rule 11 of the Civil Procedure Code.

5. This is an appeal under the Customs Act, 1962. This appeal must be placed for hearing under Order 41 Rule 11 of the CPC as hearing under Order 41 Rule 11 is not exempted in respect of these appeals.

6. We, thus, hold, overruling the contention of Mr. Chakraborty, that the appeal should be placed for hearing under Order 41 Rule 11 of the Civil Procedure Code.

7. Put up the appeal for hearing under Order 41, Rule 11 of the CPC on Thursday next. Before we part with we record our sincere appreciation for Mr. Roy Chowdhury's valuable assistance.

Asim Kumar Mandal, J.

I agree.