(2018) 07 CAL CK 0003

In the Calcutta High Court

Case No : Writ Petition26793 (W) of 2017

Soma Clearing Agents Private Ltd. & Anr. APPELLANT

Vs

Customs, Central Excise And Service Tax Appellate Tribunal, Eastern Regional Bench, Kolkata & Ors. RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:
Customs Act 1962 — Section 129, 129(1), 129(2), 129(4), 129C, 130

Citation : (2018) 07 CAL CK 0003

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Siddhartha Chatterjee, Dausik Chatterjee, Prasant Tripathi, Asok Bhowmik, Manasi Mukherjee

Final Decision : Disposed Of

Judgement

An order dated June 27, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Appeal

No.C/A283/12 is under challenge in the present writ petition on the ground of quorum non juris. Learned advocate appearing on behalf of the

petitioners submits that, in terms of Section 129C of the Customs Act 1962, the President of the CESTAT is required to constitute a Division Bench

consisting of a judicial and a technical member to consider and decide an appeal filed in respect of Customs House Agent (CHA) licence

revocation/suspension matters.

The president of CESTAT had constituted a Division Bench for such purpose. By the impugned order, the Single Bench has acted in breach of such

direction of the President of CESTAT. The impugned order has been passed by a single member which is in violation of Section 129C and the directions of the President of CESTAT. He relies upon a circular dated November 18, 2013 issued by the Registrar of CESTAT whereunder it was

clarified that, the matters relating to CHA licence revocation/suspension would be heard by a Division Bench of a judicial and a technical member.

Learned advocate appearing for the respondents refers to a written statement filed in the instant writ petition and submits that, under Section 129 of

the Act of 1962, read with Section 129C thereof, CESTAT has the authority to adjudicate matters by a single member. Moreover, the order of

CESTAT is appealable under Section 130 of the Act of 1962. The writ Court should not intervene. It appears that, CESTAT, through a single member

has passed the impugned order. The impugned order relates to a CHA. Sections 129(1) and 129C have been referred to by the parties in course of

their submissions. They are as follows :-

â??129. Appellate Tribunal â?" (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and (Service

Tax) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions

conferred on the Appellate Tribunal by this Act. 129C. Procedure of Appellate Tribunal.-

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the

members thereof.

(2) Subject to the provisions contained in(Sub-Section(4)), a Bench shall consist of one judicial member and one technical member.

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(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case

which has been allotted to the Bench of which he is a member where(a) the value of the goods confiscated without option having been given to the

owner of the goods to pay a fine in lieu of confiscation under section 125;or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of

goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved;or

(c) the amount of fine, or penalty involved, does not exceed [fifty lakh rupees]â? It appears that, members of Indirect Taxes Bar Association,

Chennai had applied before the authorities for issuance of instructions to permit hearing of CHA licence revocation/suspension matters by a single

member bench. Such request was turned down by a circular issued by the Registrar of CESTAT dated November 18, 2013. Section 129 of the Act of

1962 empowers the Central Government to constitute an Appellate Tribunal to be called CESTAT consisting of such judicial members and technical

members, as it thinks fit, to exercise powers and discharge the functions, conferred upon CESTAT, by the Act of 1962. Section 129C of the Act of

1962 deals with the procedure of the Appellate Tribunal.

It stipulates that, the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President

amongst the members thereof. Subsection (2) requires, a Bench to be consisted of one judicial member and one technical member. There is an

exception thereto which is the provisions Sub-section (4). Sub-section (4) allows the President, or any other members of the Appellate Tribunal

authorized for such purpose by the President, to sit singly and dispose of such cases as allotted to the Bench to which he is a member. There are two

stipulations in Clauses (a) and (b) of Subsection (4).

These stipulations are not relevant to facts of the present case in as much as the single member has heard the matter and passed the impugned order.

Nothing is placed on record to suggest that, the single member passing the impugned was duly authorized by the President of CESTAT to hear and

adjudicate the matter, sitting singly. In absence such authorization under Section 129C(4) of the Act of 1962, I am afraid that, the singe member had

jurisdiction to decide the case and pronounce the impugned order.

Existence of statutory alternative remedy against the impugned order under Section 130 of the Act of 1962 is not an absolute bar to the maintainability

of the writ petition particularly when the petitioner has been able to substantiate that the impugned order was passed without jurisdiction and is a

nullity. The impugned order is, therefore, a nullity. The impugned order is quashed. W.P. No.26793 (W) of 2017 is disposed of. No order as to costs.

Urgent certified Website copy of this order, if applied, be supplied to the parties, upon compliance of all requisite formalities.

