

C.M.A(MD)Nos.1012 and 1013 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2026

CORAM:

**THE HON'BLE MR JUSTICE N.ANAND VENKATESH
AND
THE HON'BLE MR JUSTICE P.DHANABAL**

**C.M.A(MD)Nos.1012 and 1013 of 2021
and
CMP (MD) Nos.9390 and 9391 of 2021**

C.M.A(MD)No.1012 of 2021

The Commissioner of Customs
Custom House,
New Harbour Estate,
Turicorin – 628 004.

... Appellant/Respondent

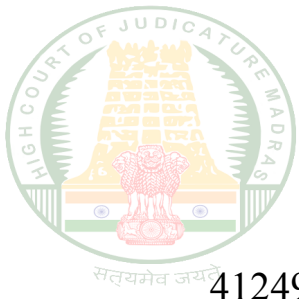
Vs.

J.M.Baxi and Co.,
No.4 and 4a, Clive Battery Complex,
Rajaji Salai, Parrys,
Chennai - 60001.

... Respondent/Appellant

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act 1962, to set aside the Final order No.

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41249-41250/2020 dated 18.11.2020 on the file of the Customs,
Central Excise and Service Tax Appellate Tribunal, South Zone,
Chennai.

C.M.A(MD)No.1013 of 2021

The Commissioner of Customs
Custom House,
New Harbour Estate,
Turicorin – 628 004.

... Appellant/Respondent

Vs.

Jan De Nul Dredging India Pvt. Ltd.,
Door No. 7, Flat No. 7, C.I.T. Colony,
Vijay Deluxe Apartments,
Mylapore,
Chennai - 600004.

... Respondent/Appellant

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of
the Customs Act 1962, to set aside the Final order No.
41249-41250/2020 dated 18.11.2020 on the file of the Customs,
Central Excise and Service Tax Appellate Tribunal, South Zone,
Chennai

For Appellant : Mr.R.Gowri Shankar (in both CMAs)

For Respondent : Mr.Haris Bindhumadhavan
(in both CMAs)



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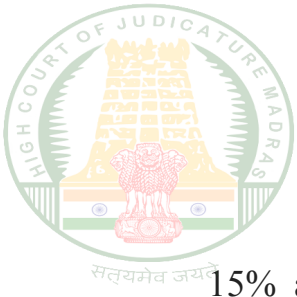
COMMON JUDGMENT

**(Judgment of the Court was delivered by
N.ANAND VENKATESH, J.)**

These appeals have been filed by the Commissioner of Customs against the common final order passed by “the Customs, Excise and Service Tax Appellate Tribunal, Chennai” (in short “CESTAT”) dated 18.11.2020.

2. The respondent in CMA (MD) No.1013 of 2021 imported used self-propelled workboat and classified the same under CTH 89019000 and availed exemption in excess of 15% of applicable duties under Notification No.27/2002-CUS as amended. The importer took the stand that the workboat falls under CTI 890190000 and whereas the department proposed reclassification under CTI 89059090.

3. The show-cause notice came to be issued after a DRI investigation on the ground of wrong classification and the exemption of



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15% availed under Notification No. 27/2002-CUS dated 01.03.2002.

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The respondent in CMA(MD) No.1012 of 2021 is the customs broker who was involved in the export of the vessel. Therefore, show-cause notice was issued to them also.

4. The case was adjudicated for misclassification and non-compliance of the re-export of the vessel within six months as provided under the exemption notification.

5. The Commissioner of Customs, Tuticorin, vide Order-in-Original dated 19.11.2012, directed payment of penalty, interest etc. Aggrieved by the same, the respondent filed appeal before the CESTAT, Chennai. The CESTAT through a common order dated 18.11.2020 allowed the appeals filed by the respondents. Aggrieved by the same, the present appeals have been filed before this Court.

6. Notice was ordered in these appeals and no substantial question of law was framed at the time of ordering notice.



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7. When the matter was taken up for hearing today, this Court entertained a doubt as to whether the present appeals are maintainable before this Court under Section 130 of “the Customs Act, 1962” (for brevity hereinafter referred to as “the Act”), since it involved claiming exemption under Notification dated 01.03.2002 which is directly or proximately relating to the rate of duty applicable for the purposes of assessment.

8. This Court heard the counsel appearing on either side and carefully went through the materials available on record.

9. In the case in hand, there was a dispute regarding the classification as well as availing exemption of applicable duties in excess of 15% under the exemption Notification No.27/2002-CUS dated 01.03.2002.



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10. It will be relevant to take note of the judgment of the Apex Court in *Navin Chemicals Mfg. and Trading Co. Ltd. v. Collector of Customs*, reported in **1993 (68) ELT 3** and the relevant portions are extracted hereunder:

“8. Before we consider whether the case of the appellant fails within the said expression, we must note that Section 130, Sub-section (I) and Section 130-E, Clause (b) of the said Act also use the said expression and they refer respectively to the Statement of Case to the High Court on a reference by CEGAT and an appeal to the Supreme Court directly. Section 130(1) states that the Collector of Customs or the other party may require CEGAT to refer to the High Court any question of law arising out of an order under appeal before it provided it is not an order relating among other things to 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'. Clause (b) of Section 130E provides that an appeal shall lie to the Supreme Court from 'any order passed by the Appellate Tribunal relating,



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among other things, to 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'.

9. The importance of the present appeal lies not so much in deciding which appeals can be heard by a member of CEGAT sitting singly and which by a Special Bench thereof as in determining where a reference can be made by CEGAT to the High Court and in which cases an appeal against an order of CEGAT can be filed directly before the Supreme Court. Where an appeal lies to the Supreme Court, the necessity of the reference on a question of law to the High Court is obviated. An appeal to this Court is provided where, as aforementioned, the questions in issue, relating to the rates of duty or the value of goods for the purposes of assessment, have relevance not only for the parties there concerned but for other importers as well.

10. Section 129D deals with the powers of the Central Board of Excise and Customs and the Collector of Customs to call for and examine the record of any proceedings before



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authorities subordinate thereto and examine the legality or propriety thereof and also to direct such authorities to file appeals. Sub-section 5 was added to Section 129-D by the Customs & Central Excise Laws Amendment Act, 1988 and it reads thus:

“(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation - For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question.-

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy



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and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

11. It will be seen that Sub-section (5) uses the said expression 'determination of any question having a relation



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to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to Sub-section 5 of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have, given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as



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to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT : does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to



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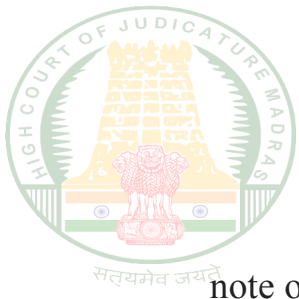


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the rate of duty applicable to the goods or to the value of the goods.”

11. The above judgment of the Apex Court brings out the distinction between Section 130 and Section 130E of the Act which provides for appeal to the High Court and to the Supreme Court from the order passed by the CESTAT. In a case which involves determination of any question having relation to the rate of duty of customs or to the value of goods for the purposes of assessment, such appeal can be filed only before the Supreme Court. The above judgment also gives a clarity where the subject matter of challenge touches upon an exemption notification and if that exemption notification relates directly or proximately to the rate of duty applicable for the purposes of assessment and that will also fall within the ambit of Section 130E of the Act and consequently, the appeal would lie only before the Supreme Court.

12. The above judgment of the Apex Court has been subsequently followed in various judgments and it will suffice to take



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note of those judgments hereunder:

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1. Steel Authority of India Ltd. v. Designated Authority, Directorate General of Anti- Dumping & Allied Duties [2017 (349) E.L.T. 193 (S.C.)]
2. Commissioner of Customs, Bangalore - 1 v. Motorola India Ltd. [2019 (368) E.L.T. 3 (S.C.)]
3. Maruti Udyog Ltd. v. Commr. Of Cus., Chennai [2019 (369) E.L.T. 354 (Mad.)]
4. Commissioner of C. Ex., Chennai Vadapalani Press [2015 (320) E.L.T. 238 (Mad.)]
5. Coimbatore Polytex Ltd. v. CESTAT, Chennai [2015 (319) E.L.T. 293 (Mad.)]
6. Commissioner of Customs (Exports), Chennai v. D. S. Metal (P) Ltd. [2015 (323) E.L.T. 328 (Mad.)]
7. Commr. of Cus., C. Ex. & Service Tax v. Jubilant Life Sciences Ltd. [2014 (306) E.L.T. 212 (All.)]



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13. In the case in hand, apart from the misclassification, the respondents have also availed exemption under the notification and thereby 15% of the aggregate duty payable has not been paid. Even though classification of goods will not come within the purview of Sub-section (1) of Section 130 and Clause (b) of Section 130E, there is definitely an element of rate of duty of customs which is relatable to the exemption notification and which was availed by the respondents to the tune of 15% of the aggregate duty payable. Therefore, if among other things, the issue also involves determination of any question having relation to the rate of duty of customs, the appeal will lie only before the Supreme Court under Section 130E of the Act. Thus, the challenge made to the order passed by the CESTAT is maintainable only before the Supreme Court and not before this Court.

14. In the light of the above discussion, these appeals are closed and it is left open to the department to file an appeal before the Supreme Court, if so advised and proceed further in accordance with law. Consequently, connected miscellaneous petitions are closed.



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15. The Registry is directed to return the original orders passed by the CESTAT, Chennai, to the learned Standing Counsel for the department, to enable the department to file an appeal before the Apex Court.

[N.A.V., J.] [P.D.B., J.]
12.03.2026

NCC :Yes/No
Index :Yes/No
PKN

To

1.The Commissioner of Customs
Custom House,
New Harbour Estate,
Turicorin – 628 004.

2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zone, Chennai.

3.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.



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