

IN THE HIGH COURT OF GUJARAT  
AT AHMEDABAD

Case Tracker

**MITTAL PIGMENTS PVT LTD Vs CC [CESTAT]**

R/Tax Appeal No. 12 of 2019  
Civil Application (for Stay) No. 1 of 2018

**THE COMMISSIONER OF CUSTOMS**

**Vs**

**M/s MITTAL PIGMENTS PVT LTD**

**J B Pardiwala & A C Rao, JJ**

**Dated: June 27, 2019**

**Appellant Rep. by: Viral K Shah (5210)**  
**Respondent Rep. by: Umaidsingh Bhati (7973)**

**Cus - This appeal under Section 130 of Customs Act, 1962 has been preferred by revenue challenging the order passed by Tribunal in 2018-TIOL-2022-CESTAT-AHM - It is apparent that against an order of Appellate Tribunal relating to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment shall lie before the Supreme Court and the High Court has no jurisdiction to entertain an appeal against such order - Having regard to the fact that controversy involved in the present case directly relates to the question of determination of rate of duty of customs, the appeal is not maintainable before this Court: HC**

**Appeal disposed of**

**JUDGEMENT**

**Per: J B Pardiwala:**

**1. This Tax Appeal under Section 130 of the Customs Act, 1962 (for short “the Act, 1962”) has been preferred by the Commissioner of Customs (Preventive), Jamnagar challenging the order passed by the Customs, Excise & Service Tax Appellate Tribunal (for short “the CESTAT”) dated 25.04.2018 in A/10766/2018 = 2018-TIOL-2022-CESTAT-AHM by proposing the following questions of law:**

***“i. Whether the tribunal has right to dispose off the case only on the application of Early Hearing, without giving opportunity to the respondent – department to raise objection.***

***ii. The respondent has right to file cross objection within 45 days of notice of the appeal a per Section 129A(4) of the Customs Act. Whether the tribunal has right to deprive the respondent – department from the same***

*and to decide the appeal without giving any opportunity to the respondent - department before expiry of 45 days period as stipulated in the Act.*

*iii. Whether the tribunal has right to decide the case prematurely without following principle of natural justice.*

*iv. The other co-noticees of the OIO have also filed appeals before tribunal against the same order-inoriginal; however, the tribunal has taken up the appeal of only M/s. Mittal Pigments, leaving the rest of appeals undecided. These appeals were neither listed for early hearing nor taken up for disposal along with appeals of the main appellant.”*

**2. At the outset, Mr. Umaidsingh Bhati, the learned counsel appearing for the respondent has raised a preliminary objection as regards the maintainability of the present appeal. Referring to the impugned order, and more particularly, to the contents of paragraphs 8 and 9 thereof, it is pointed out that the issue involved in the present case pertains to the claim of benefit of classification of goods under the heading CTH 26070000 being a “Lead Concentrates”. To put it in other words, the submission of Mr. Bhati is that the present case directly relates to the determination of the rate of duty and as such, in view of the provisions of Section 130 of the Act, 1962, this appeal is not maintainable before this Court.**

**3. Mr. Viral K. Shah, the learned senior standing counsel appearing for the appellant very fairly submitted that there is no reply to the preliminary objection raised by the learned counsel for the respondent as regards the maintainability of the present appeal.**

**4. Section 130 of the Act which makes provision for “Appeal to High Court” lays down that, an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, (not being 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) if the High Court is satisfied that the case involves a substantial question of law. Section 130E of the Act which provides for “Appeal to the Supreme Court” interalia lays down that an appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal relating, amongst other things, to the determination of any question having a relation to the rate of duty of customs or at the value of goods for purposes of assessment.**

**5. In the light of the aforesaid statutory provisions, it is apparent that against an order of the Appellate Tribunal relating to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment shall lie before the Supreme Court and the High Court has no jurisdiction to entertain an appeal against such order. Having regard to the fact that controversy involved in the present case directly relates to the question of determination of rate of duty of customs, the appeal is not maintainable before this Court.**

**6. For the foregoing reasons, without entering into the merits of the case, the appeal is disposed of as not maintainable before this Court. It would be**

**open for the Commissioner of Customs to avail of any other appropriate legal remedy before appropriate forum in accordance with law.**

**7. As the main appeal is disposed of, the connected Civil Application would not survive and the same is disposed of.**