IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 36 OF 2025
WITH
CUSTOMS APPEAL NO. 39 OF 2025

The Commissioner of Customs (General),
Air Cargo Complex ...Appellant
V/s.
J M Baxi & Co. & Ors. ...Respondents

Ms. Shruti Vyas, with Ms. Niyati Mankad, for the Appellant in both matters.

Mr. Vipin Kumar Jain, with Mr. Kartik Dedhia & Mr. Rishabh Jain, i/b, TLC Legal LLP, for the Respondents in both matters.

Mr. Avinash Punia, Assistant Commissioner of Customs, Mumbai.

CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.

DATE : 28th AUGUST 2026

P. C.:

1. The above Appeals are filed by the Revenue under Section 130 of the Customs Act, 1962 ("**Customs Act**") challenging the Final Order No. A/87479-87484/2024 dated 13th December 2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai **(CESTAT)**, in Customs Appeal No. 86529 of 2016 and five other Appeals filed by the Respondents. According to the Revenue, the impugned order of the CESTAT gives rise to the following four substantial questions of law:-

A. Whether, in the facts and circumstances of the case and in law, the Hon'ble CESTAT erred in holding that the salvage equipment imported under transshipment permits was used as 'stores' under

Section 88 of the Customs Act, 1962, despite evidence indicating that the equipment was deployed on coastal vessels and not on the foreign-going vessel MSC Chitra, and whether territorial destination is irrelevant for the applicability of exemption under Section 88?

B. Whether, in the facts and circumstances of the case and in law, the Hon'ble CESTAT erred in setting aside the demand of duty under Section 28 read with Section 12, and the confiscation and penalty orders under Sections 111(n), 111(o), 114A and 114AA of the Customs Act, 1962, without proper evidence of compliance with statutory transshipment procedures and without shifting the burden of proof onto the importer to establish actual movement, usage, and accounting of the goods?

C. Whether, in the facts and circumstances of the case and in law, the Hon'ble CESTAT erred in treating the vessels involved in the salvage operation as 'extension' of the distressed foreign-going vessel under salvage law, thereby extending the benefit of duty exemption under Sections 86 and 88 of the Customs Act, 1962, to goods used on vessels other than MSC Chitra?

D. Whether in the facts and circumstances of the case, the Hon'ble CESTAT erred in setting aside penalty imposed on the Respondent No. 2 and Respondent No. 3 under Section 112(a), 112(b) and under Section 114 AA of the Customs Act, 1962.

2. At the outset, as far as the questions 'A' and 'C' are concerned, the learned Counsel appearing on behalf of the Respondents submitted that if the aforesaid two questions are being pressed, then the present Appeals would lie before the Hon'ble Supreme Court under the provisions of Section 130E of the Customs Act, 1962. The learned Counsel further submitted that what these questions project is whether the Respondent – Assessees are entitled to

the exemption of the '*stores'* imported for conducting salvage operations of a ship called '*MSC Chitra'* which had a collision with another vessel called '*MV Khalija II'.*

3. From the material on record we find that salvage operations were necessary because, due to the aforesaid collision, the vessel *MSC Chitra* was listing and a lot of its cargo was floating in the Bombay Harbour, some of which had even sunk, thereby causing a blockage of the navigation channel of the Bombay Harbour. In the Show Cause Notice issued to the Respondent – Assessees, as well as in the order passed by the Commissioner, it was not in dispute that what was imported by the Respondent – Assessees were '*stores*'. However, for the first time before the CESTAT, it was contended by the Revenue that what was imported by the Respondent – Assessees could not be termed as '*stores'*. It is in this light that the CESTAT also gave an alternate finding that even assuming what was imported were not '*stores*, they were goods that were transshipped from the Bombay Airport Cargo Complex or the Nhava Sheva Port to the Bombay Port for the purposes of salvage operations.

4. Be that as it may, even before us today, it is conceded and accepted that what was imported by the Respondent - Assessees were '*stores'* for the purposes of salvaging *MSC Chitra*. It also transpires that the salvage operations were unsuccessful despite all efforts and *MSC Chitra* was therefore taken out to international waters and thereafter sunk so that it does not cause any hindrance to navigation.

5. When one peruses the questions 'A' and 'C' as projected by the Revenue, we are of the view that the same would squarely fall within Section 130E(b) of the Customs Act. We say this because the issue raised before us would certainly relate to the determination of a question having a relation to the rate of duty of customs which comes exclusively under the jurisdiction of the Hon'ble Supreme Court to decide. For the sake of convenience, Section 130E of the Customs Act is reproduced hereunder:

> *"**130E. Appeal to Supreme Court***
> *An appeal shall lie to the Supreme Court from–*
> *(a) any judgment of the High Court delivered–*
> *(i) in an appeal made under section 130; or*
> *(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;*
> *(iii) on a reference made under section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or*
> *(b) <u>any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal 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.</u>"*
>
> (emphasis supplied)

6. In fact, even Section 130 of the Customs Act, which deals with an appeal to the High Court, categorically stipulates that an appeal shall lie to the High Court from every order passed in Appeal by the Appellate Tribunal on or after 1st July 2003, 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. For the sake of convenience, Section 130 is reproduced hereunder :-

"130. Appeal to High Court

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 <u>(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)</u>, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Principal Commissioner of Customs or Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be–

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Commissioner of Customs or Commissioner of Customs or the other party;

(b) accompanied by a free of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulate, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

PROVIDED that nothing in this sub-section shall be formulated to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated

and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which–

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law

> *upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.*
>
> *(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court, shall as far as may be, apply in the case of appeals under this section.]"*

(emphasis supplied)

7. When one reads these provisions, it is clear that the word '*any*' in the aforesaid provisions gives the exclusion as regards jurisdiction, a wide sweep, indicating that the question referred to therein is not limited to a specific question concerning the rate of customs duty or the value of goods. In other words, even peripheral questions touching a question pertaining to rate or valuation can attract such exclusion. Further, the conscious use of the phrase "*among other things*" also seeks to communicate that these are not the only exclusions and are merely illustrative of a broader category questions concerning the rate of duty and valuation.

8. Another good reason to hold the aforesaid is that the decision on such an issue would not only have ramifications *in personam* but also *in rem*. The consequences thereof would be applicable to all the Assessees who are salvagers and are called upon to salvage vessels in India. The provision therefore intends uniformity in determination of fiscal questions having wide ramifications. In the view that we take, we are supported by a recent decision of the Hon'ble Supreme Court in the case of ***Alupro Building Systems Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore II [2026 SCC OnLine SC 986]***, the relevant portion of which reads thus:-

"24. A plain yet careful reading of Section 35G leaves very little to imagine. The word "any" in the aforesaid expression gives the exclusion as regards the jurisdiction a wide sweep, indicating that the question referred to therein is not limited to a specific question of rate of excise duty or value of goods. In other words, even peripheral questions touching a question pertaining to rate or valuation can attract such exclusion. Further, the conscious use of the prefatory phrase "among other things" also serves to communicate that these are not the only exclusions and are merely illustrative of a broader category of rate of duty and valuation. These words or phrases in the provision cannot be assumed to be surplusage.

25. The expression "for purposes of assessment" also deserves some attention. It qualifies and governs both the preceding limbs of the exclusion i.e., the rate of excise duty and the value of goods. In other words, the exclusion is not triggered by every question touching rate of duty or value of goods in the abstract. The question must have a relation to rate or value specifically in the context of assessment. It is not the mere mention of rate or value in an order that triggers the exclusion but the fact that the question goes to the root of the assessment itself.

26. The argument that the question of excisability is distinct from the question of "rate of duty" deserves to be rejected at the threshold. The two questions are not merely related, they are sequentially and logically interdependent. An issue on excisability of goods would be intrinsically connected with the "rate of the duty" for the "purpose of assessment". The decision on excisability of goods is a precursor to the determination of any question having a relation to the rate of excise duty or to the value of goods for the purpose of assessment. Afterall, the levy of excise duty presupposes that the goods upon which such assessment is to be made, are downstream consequences of determination of excisability. To hold otherwise would be to sever what is inherently a continuous chain of fiscal adjudication into fragments, which the legislature could never have intended.

27. One another good reason to hold the aforesaid is that decision on such an issue would not only have ramifications in personam but also in rem. The consequences thereof would be applicable on all the assessees dealing in the particular goods. The provision intends uniformity in the *determination of fiscal questions having wide ramifications.*

28. It is pertinent to note that the jurisdiction of the High Court under Section 35G is not a matter of absolute right but is a creature of statute, and therefore, the conditions precedent to the exercise of such jurisdiction must be strictly construed. The legislature has expressed its intention by employing clear and deliberate language in the bracketed portion of sub-section (1) of Section 35G to exclude a category of orders from appellate jurisdiction of the High Court.

29. Although the respondent has not addressed the submission canvassed by the appellant on maintainability of the appeal as regards the issue of jurisdiction, yet it could be argued that the question of excisability is a pure question of law and therefore falls within the High Court's jurisdiction to decide a "substantial question of law" under Section 35G. This argument although, at first glance, appears persuasive, yet does not withstand scrutiny.

30. Jurisdiction cannot be assumed merely because the question is framed as question of law, if the underlying subject matter of the order is that the legislature has explicitly placed beyond the reach of the High Court. In other words, the nature of the question, whether it is one of fact, law, or mixed question of fact and law, is a separate inquiry from whether the subject matter of the order falls within the exclusionary bracket. The satisfaction of the High Court as to the existence of a substantial question of law is a condition precedent to the exercise of jurisdiction but it has to be within the four corners of bar imposed by the exclusion."

(emphasis supplied)

9. We are mindful of the fact that the aforesaid decision is rendered in the context of the Central Excise Act, 1944. However, we find that the language of Section 35G and 35L of the Central Excise Act, 1944, which were being considered by the Hon'ble Supreme Court, at least for our purposes, are almost identical to the provisions of Section 130 and Section 130E of the Customs Act. In other words, in our opinion, the ratio laid down by the

Hon'ble Supreme Court in ***Alupro Building Systems Pvt. Ltd. (supra)*** would apply with all force to the present case which is under the Customs Act. The questions as framed, especially 'A' and 'C', in our view would have pan India ramifications. Answering these questions would not only affect the Assessees in the present case but would affect every salvager who imports '*stores*' to carry out salvage operations in India.

10. We are therefore clearly of the view that questions 'A' and 'C' as raised, would certainly be one which would relate to "*the determination of any question having a relation to the rate of duty of customs*". Once this is the case, we find that this Court has no jurisdiction to entertain the above Appeals as the same would lie directly before the Hon'ble Supreme Court under Section 130E of the Customs Act.

11. In view of the foregoing discussion, the above Appeals are dismissed and the Revenue is free to approach the Hon'ble Supreme Court to challenge the order of the CESTAT dated 13th December 2024.

12. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(FARHAN P. DUBASH, J.) **(B. P. COLABAWALLA, J.)**

Amol