

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH 2014

PRESENT

**THE HON'BLE MR. JUSTICE DILIP B BHOSALE**

AND

**THE HON'BLE MR. JUSTICE B MANOHAR**

**CSTA.NO.5/2012**

BETWEEN

COMMISSIONER OF CUSTOMS  
C.R.BUILDING, QUEENS ROAD,  
BANGALORE-560 001.

... APPELLANT

(BY SRI JEEVAN J. NEERALGI, ADV.,)

AND

M/S.BHARTI AIRTEL LIMITED,  
DIVYASHREE TOWERS,  
NO.55, BANNERGHATTA ROAD,  
BANGALORE-560 029.

... RESPONDENT

(BY SRI HARISH R. ADV., & NEETHU JAMES, ADV.,)

THIS CSTA FILED IS FILED UNDER SECTION 130 OF THE CUSTOMS ATC, ARISING OUT OF ORDER DATED 07.06.2012, PASSED IN FINAL ORDER NOS.365-373/2012, PRAYING TO I) DECIDE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN II) SET ASIDE THE FINAL ORDER NOS.365-373/2012 DATED 07.06.2012 PASSED BY THE CESTAT, SOUTH ZONAL BENCH, BANGALORE, INsofar AS DISMISSING THE APPEAL OF THE DEPARTMENT AND ETC.,

THIS CSTA COMING ON FOR ADMISSION, THIS DAY, *Dilip B. Bhosale J.*, DELIVERED THE FOLLOWING:

PC:

Heard learned counsel for the parties.

2. The revenue, in the present appeal, has challenged the order passed by the Tribunal confirming the penalty equivalent to duty under Section 114-A of the Customs Act, 1962 (for short 'Act'). According to the revenue, the penalty ought to have been imposed equivalent to both i.e., the duty as well as the interest. The very same order, which is impugned in the present appeal, has already been carried by the respondent-assessee to the Supreme Court in Civil Appeal Nos.5989-5990/2012 wherein they have challenged the levy of duty, interest and penalty. The Supreme Court has admitted the appeal on 07.09.2012. In this view of the matter, in our opinion, the revenue should carry this appeal also to the Supreme Court to be heard with the appeal preferred by the assessee challenging the levy of duty, interest and penalty. When we so expressed, learned counsel appearing for the revenue could not and did not dispute

this proposition in view of the order passed by this Court in **Commissioner of C.EX., Bangalore-III -vs- T.D.Power Systems Pvt. Ltd. (2011 (270) E.L.T. 502 (Kar.)**. In that case also, in a similar situation, the revenue was relegated to file appeal before the Supreme Court.

3. In the circumstances, **this appeal is disposed of** with liberty to the revenue to prefer an appeal under Section 130E of the Act.

Sd/-  
JUDGE

Sd/-  
JUDGE

TL