

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 07th DAY OF MARCH 2014

PRESENT

THE HON'BLE MR. JUSTICE DILIP B BHOSALE

AND

THE HON'BLE MR. JUSTICE B MANOHAR

C.S.T.A.NO.2/2011

BETWEEN:

M/s.Bharath Hospital and Institute of Oncology,
(Formerly M/s.Bharath Cancer Hospital),
Outer Ring Road, Hebbal,
Mysore-570 017.

Represented by its Administrator
& Authorised Signatory Ms.K.Vedavathi.

... APPELLANT

(By Sri.Arun SriKumar, Adv. for Sriyuths Nayak &
Srikumar, Advs.)

AND:

Commissioner of Customs,
New Customs House,
Ballard Estate,
Mumbai-400001.

...RESPONDENT

(By Sri.N.R.Bhaskar, CGSC)

This CSTA is filed under Section 130(A) of the Customs Act, 1962, arising out of the order dated 05.05.2009 passed in Final Order No.802/2009, praying to set aside the Final Order No.802/2009 dated 05.05.2009 passed by the CESTAT, South Zonal Bench, Bangalore, dismissing the Appellant's Appeal No.C/343/03 produced at Annexure-A and allow the appeal and set aside the order in original S/26-Misc-31 (XXXii) 98 GR VB dated 27.08.2003 passed by the Commissioner of Customs, produced herewith at Annexure-M in the interest of justice and equity.

This CSTA coming on for final hearing this day, DILIP B. BHOSALE J. , delivered the following:-

PC:

Heard learned counsel for the parties.

2. At the outset, learned counsel appearing for the respondent, invited our attention to the judgment of this Court in ***Neptune Trade Links Pvt.Ltd. vs. Commissioner of Customs, Cochin [2012 (28)***

S.T.R.92 (Kar)] and submitted that this Court has no jurisdiction to entertain the present appeal and it is the Bombay High Court, which is the concerned High Court to file an appeal against the impugned order, since the order in original was passed by the Commissioner of Customs (Imports), Mumbai.

3. Having confronted with this, learned counsel appearing for the appellant, filed a memo of withdrawal dated 07.03.2014 seeking permission to withdraw this appeal with liberty to the appellant to file an appeal before the High Court of Judicature at Bombay.

4. Learned counsel for the respondent, has no objection for allowing the appellant to withdraw the appeal with liberty as prayed. He submits that before the Bombay High Court, the respondent shall not raise an issue of territorial jurisdiction. His statement is accepted.

5. In the circumstances, for the reasons stated in the memo of withdrawal dated 07.03.2014, this appeal is dismissed as withdrawn with liberty as prayed. It is made clear that the appellant shall file an appeal before the Bombay High Court within a period of eight weeks from today. The office is directed to return the certified copy of the impugned order to the appellant retaining a photocopy of the same on record. It is made clear that while allowing to withdraw the appeal, we have not examined the question of jurisdiction and the liberty is granted in view of the prayer made by learned counsel for the appellant.

Sd/-
JUDGE

Sd/-
JUDGE

Srl.