

Union of India and Others

Vs

Umosh Dhaimode

Civil Appeal No. 4472 of 1990

(CJI S. B. Majmudar, S. P. Bharucha, JJ)

13.02.1997

ORDER

1. The then Judicial Commissioner, Goa, Daman and Diu, took the view that Section 128(2) of the Customs Act, 1962, as it then read, did not vest the appellate authority with the power to remand. Accordingly, he set aside such order and the Revenue is in appeal.
2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision.
3. We may point out that the respondent has not appeared but has filed an affidavit which suggests that the Customs, Excise and Gold (Control) Appellate Tribunal had also taken the view that the appellate authority, on an application made to it by another person in the same position as the respondent, could not have remanded this matter. If that order of the Tribunal remains in operation, the authority below shall, notwithstanding this order, not be entitled to proceed.
4. With this reservation, the appeal is allowed and the judgment and order under appeal is set aside. No order as to costs.