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(2011) 08 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No''s. 2878-2879 of 2008

Commissioner of C. Ex., Coimbatore — APPELLANT

Vs

Universal Radiators Ltd. — RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:
Central Excise Rules, 1944 — Rule 209(A)

Citation : (2011) 273 ELT 20

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Varun K. Chopra, Vaibhav Srivastava, B.V. Balaram Das, Sunita Rani Singh and B.K. Prasad, for the Appellant; Jayanth Muth Raj, Malavika G. and P.V. Dinesh, for the Respondent

Final Decision : Allowed

Judgement

1. Delay condoned.

2. These appeals are directed against the judgment and order dated 29-8-2007 2007 (123) ECC 136 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter called "CESTAT"). By the aforesaid order, the Tribunal held that the procedure laid down in Chapter X is meant only to establish the receipt of the goods of the recipient unit and their utilisation.

3. In these appeals, two issues have been urged for consideration by this Court. One is whether M/s. Southern Press Tools is entitled for exemption under Notification No. 164/87 dated 10-6-1987 for the goods cleared to Respondents herein without observance of the procedures prescribed under Chapter X of the Central Excise Rules, 1944. The next issue which is also urged is whether penalty can be imposed on the Respondents under Rule 209(A) of the erstwhile Central Excise Rules, 1944.

4. Notice was issued and during the pendency of the aforesaid appeals in this Court, a similar issue came to be decided by a Constitution Bench of this Court

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in Commissioner of Central Excise, New Delhi Vs Hari Chand Shri Gopal and Others, etc. etc. . In the said case, the Constitution Bench of this Court considered the matter of exemption and also the pre-conditions for entitlement to avail such exemption. While deciding the said matter, this Court held that the Tribunal has committed an error in overlooking the object and purpose of the procedure laid down in Chapter X. It was also held that detailed procedures have been laid down in Chapter X so as to curb the diversion and misutilisation of goods which are excisable. This Court while dealing with the scope and ambit of Chapter X and while laying down the aforesaid conclusions have also laid down certain guidelines. In the said case, this Court has clearly held that the aforesaid approach of the Tribunal was wrong and illegal.

5. On going through the records of the present case, we find that a similar approach has been taken by the Tribunal in the present case also and, therefore, the decision rendered by the Tribunal is required to be set aside which we hereby do. We, therefore, while setting aside the judgment and order passed by the Tribunal, remit back the matter to the Tribunal for fresh consideration de novo of the dispute in accordance with law as expeditiously as possible preferably within a period of six months from the date of the receipt of the records of this case. Needless to state that Tribunal shall consider the appeals pending before it in accordance with law laid down by the Constitution Bench of this Court in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Copal and Ors. (supra).

6. The appeals are allowed to the aforesaid extent.

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