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(2016) 09 AHC CK 0164

In the Allahabad High Court

Case No : Customs Appeal Defective No. 103 of 2016

Commissioner of Customs — APPELLANT

Vs

D.S. Tyres — RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Citation : (2016) 341 ELT 56

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Shri Ramesh Chandra Shukla, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. The application seeking condonation of delay having been allowed vide order of date passed on Delay Condonation Application, let appeal be registered with regular number and old number shall also be continued to be shown in bracket for ding out details of case, whenever required by parties with reference to either of the two numbers.

2. As requested by learned counsel for parties, we proceed to hear and decide this appeal.

3. Heard Shri Ramesh Chandra Shukla, learned counsel for the appellant.

4. The appeal has arisen from judgment and order dated 29-1-2016 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Customs Appeal No. C/52016/2015-C(SM) holding that permission of Ministry of Environment and Forest (hereinafter referred to as "MoEF") was not required for clearance of consignment of ''Old and Used Tyres'' and thus Assessee was entitled for redemption of imported consignments on payment of redemption of 15% of value.

5. Having said so, the Tribunal has also reduced quantum of penalty to Rs. 30,000/- since consignment of old and used tyres are directly reusable by

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Assessee in order to record its finding that permission of MoEF was not required.

6. Tribunal has relied on its earlier judgment in the case of Jibran Overseas v. Commissioner, decided on 8-4-2015 [2015 (329) E.L.T. 489 (Tribunal)] holding that MoEF permission is not required for clearance of old and used tyres; and that since, the used tyres directly reusable, are excluded from entry B-3140. In the instant case Revenue has not properly interpreted definition of B-3140 in arriving at the conclusion that MoEF certificate was required inasmuch as B-3140 includes Waste of Pneumatic Tyres, which leads to resource, recovery, recycling, reclamation or direct reuse. Central Board of Excise and Customs vide instruction issued vide F. No. 528/109/2011-STO(TU), dated 12-7-2013 in Para 5 has clarified that "imports of retreaded or used tyres are allowed subject to compliance of provisions of Foreign Trade Policy, and requirement of consent/ permission from Ministry of Environment and Forest as stipulated in Hazardous Wastes (Management Handling and Transboundary Movement) Rules, 2008".

7. Learned counsel for appellant when enquired, admitted that the said judgment of the Tribunal in Jibran Overseas (supra) has already attained finality. That being so, no substantial question of law has arisen in this matter.

8. Appeal is accordingly, dismissed.

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