(2015) 09 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 1102 of 2007

Commissioner of Customs, Bangalore — APPELLANT

Vs

BPL Telecom Ltd. — RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 325 ELT 467

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri A.K. Panda, Senior Advocate, Ms. Shirin Khajuria, Ms. Sunita Rani Singh, Shankar Divate and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Allowed

Judgement

1. Though initially dispute arose about classification of the goods in question, viz., equipments pertaining to setting up of VSAT terminals used in television broadcasting, that was decided and on that basis, the respondent herein filed application for refund. This refund application was rejected by the Deputy Commissioner of Customs vide his orders dated 31-7-2000.

2. Against this order of the Deputy Commissioner, the assessee filed the appeal. It appears from the reading of the orders dated 18-5-2006 [2006 (201) E.L.T. 503 (Tribunal)] passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") in the said appeal that the CESTAT has merely gone into the issue of classification and has not dealt with the issue which was really involved, viz., whether the respondent was entitled to refund or not. That appeal, in any case, against the order of rejection qua refund claim preferred by the assessee was not maintainable as held by this Court in Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) [2005 (10) SCC 433 = 2004 (172) E.L.T. 145 (S.C.)].

3. We, thus, allow this appeal and set aside the order of the CESTAT.

