(2014) 07 AP CK 0175

In the Andhra Pradesh High Court

Case No : C.E.A. No. 86 of 2014

Commissioner of Customs, Central Excise and Sales Tax	APPELLANT
Vs	
Babu Enterprises	RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2015) 320 ELT 733

Hon'ble Judges : K.J. Sengupta, C.J.;Sanjay Kumar, J.

Bench : Division Bench

Judgement

K.J. Sengupta, C.J.?This appeal is preferred against a small order of the learned Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Bangalore, dated 10-10-2013, and is sought to be admitted on the following substantial questions of law:

a. "Whether the CESTAT, Bangalore, is justified in rejecting the appeal on the basis of monitory limits without going into the facts and merits of the case?

b. Whether the CESTAT, Bangalore, is correct in rejecting the appeals though the disputed period of the show cause notice pertains to 9/2010 to 3/2011 which is well before the issuance of the Board Circular No. 390/Misc./163/2010-JC, dated 17-8-2011?

c. Whether the CESTAT, Bangalore, is justified in relying on the decision in the case of Commissioner of Income Tax, Bangalore v. Ranka & Ranka [2012 (284) E.L.T. 185 (Kar.)]?

d. Whether the CESTAT, Bangalore is justified in rejecting the appeal by defaulting in compliance with the provisions of Finance Act, 1994?

e. Whether the CESTAT, Bangalore, is justified in rejecting the appeal contrary to the Hon''ble Supreme Court''s decision upholding/restoring the penalty?"

By the impugned order, the learned Tribunal found on fact that the appeal should not have been preferred in view of Central Board of Excise & Customs Circular No. 390/Misc/163/2010-JC, dated 17-8-2011, as the duty involved in the case was admittedly below Rs. 5,00,000/-. It appears that undisputedly the appeal was filed after the notification was enforced.

2. Learned counsel appearing for the appellant, however, argued that since the dispute relates to prior to the aforesaid notification, appeal should have been admitted by the Tribunal. He argued that in one of such matters, being C.E.A. No. 65 of 2014, this Court has been pleased to admit the appeal. We have called for the original file of the matter referred to by the learned counsel appearing for the appellant and it appears that we have admitted the appeal on fact that at the time of preferring appeal the Circular was not in force. According to us, the date of filing of the appeal is reckoning factor in order to see whether above notification is to be applied or not and it is not the time when the dispute arose. Hence, we do not find any reason to interfere with the impugned order and the appeal is dismissed. There will be no order as to costs.