(2016) 12 AHC CK 0003

In the Allahabad High Court

Commissioner of Customs, Noida APPELLANT

Vs

Jibran Overseas RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:
Customs Appeal No. 278 of 2015

Citation : (2017) 347 ELT 4

Hon'ble Judges : Bharati Sapru and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Shri Bijendra Kumar Singh and B.K.S. Raghuvanshi, Counsels, for the Appellant; Shri Gopal Verma, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Sri Prateek Chandra, learned Counsel for the appellant-department and Sri Gopal Verma, learned Counsel for the respondent-assessee.

2. This is a customs appeal filed by the department under Section 130A of the Customs Act, 1962 against the order of the Tribunal dated 5-5-2015 [2015 (329) E.L.T. 489 (Tribunal)]. The questions of law referred to are hereunder :-

"(i) Whether in view of the facts and circumstances of the case, the Hon''ble Tribunal was justified in arriving at the decision that the impugned goods are not Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, their import did not require permission of the MOEF and absolute confiscation thereof is not warranted and reducing the redemption fine and penalty to 15% and 10% of the re-determined value respectively?

(ii) Whether an earlier erroneous order passed by the Hon''ble Tribunal could be the basis for passing the impugned order?

(iii) Whether the Hon''ble Tribunal has committed an error of law in accepting the prayer of the respondent, on the basis of information provided by the party which misled the Hon''ble CESTAT to pass the impugned order?"

3. In the show cause notice, which was issued to the assessee it was clearly indicated that the assessee was seeking clearance of goods declared as old and used tyres of different sizes. In the same show cause notice in Paragraph No. 4(iv) the authority noted that the tyres can be reused and have a minimum residual life of about 45-55% of the new tyres.

4. The case of the department is that the tyres, which were being imported by the assessee would have to have permission for import into the country under Entry B3140. The Entry B3140 is quoted hereunder :-

"Waste pneumatic tyres, excluding those which do not lead to resource recovery, recycling, reclamation or direct reuse."

5. The Tribunal has recorded a clear finding with regard to the item, which is sought to be imported by the assessee that it is not a waste tyre rather it is a reusable tyre, which falls within the exclusion clause of the entry. The Tribunal, therefore, has rightly come to the conclusion that the imported goods were not hit by the mischief of hazardous waste and could not be defined as hazardous waste and, therefore, their import did not require the permission of the MOEF.

6. Having heard learned Counsel on both sides, we are of the opinion that the view taken by the Tribunal that reusable tyres fall within the exclusion clause of the entry is correct. The questions of law are, therefore, answered in favour of the assessee and against the department.

7. The appeal is disposed of as above. No costs.