(2003) 09 SC CK 0105

In the Supreme Court Of India

Case No : Civil Appeal No.D11364 Of 2003

Commr. of C. Ex., Chandigarh — APPELLANT

Vs

Smithkline Beecham Co. Health C. Ltd. — RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2003) 111 ECR 10 : (2003) 157 ELT 497

Hon'ble Judges : S. N. Variava, J;H. K. Sema, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Delay condoned.

2. This appeal is filed against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal dated 19th December, 2002. The Tribunal was hearing an appeal against an order dated 23rd April, 2002 passed by the Commissioner of Central Excise (Appeals). By that order the Commissioner (Appeals) had merely dismissed the appeal because pre-deposit was not made. The Commissioner (Appeals) had not gone into the merits. Therefore, the only question before the Tribunal was whether pre-deposit was required or not. The Tribunal has chosen to go into the merits and decided the appeal on merits also. This should not have been done.

3. Parties are agreed that the order of the Tribunal should be set aside and the matter be referred back to the Commissioner (Appeals) with the condition that the pre-deposit is dispensed with. Accordingly, the impugned order is set aside. The Commissioner (Appeals) to see that pre-deposit is waived. The Commissioner (Appeals) not to take into consideration any of the observations made in the impugned order which stands set aside.

4. The appeal is accordingly disposed off. No order as to costs.