(2015) 03 BOM CK 0238

In the Bombay High Court

Case No : Central Excise Appeal No. 140 of 2014

Dy. Chief Manager Printing and Stationary — APPELLANT

Vs

Commissioner of Central Excise and Customs — RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 320 ELT 122

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : R.V. Desai, Senior Advocate and Sangeeta Yadav i/by Suresh Kumar, for the Appellant; Pradeep S. Jetly and Jitendra Mishra, Advocates for the Respondent

Judgement

1. This appeal challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai dated 20 August 2013. The Tribunal has dismissed the appeal of the appellant before us only on the ground that the appellant has not referred the dispute to a Committee of Disputes which was constituted earlier by the Government of India and in terms of the judgment of the Hon''ble Supreme Court in the case of 1992 Supp (2)SCC 432 and later orders following the same.

2. Mr. Desai, learned Senior Counsel appearing on behalf of the appellant points out that a five Judge Bench of the Hon''ble Supreme Court in the case Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 has clarified the legal position and now it is not mandatory for the disputes between the two Governmental agencies or departments to be referred to any committee.

3. We are of the opinion that the Tribunal should not have therefore dismissed the appeal of the appellant only on this ground.

4. We are surprised to note that, in another appeal of the appellant before us, the Tribunal entertained the application for dispensation and waiver of pre-deposit of duty, interest and penalty and passed an order thereon on 7th February 2012.

5. The appeal therefore should not have been dismissed without adjudication. Even if, it was dismissed for want of prosecution on the application of the appellant, the same should have been restored. The restoration application could not have been dismissed by the reasons which are assigned in the impugned order.

6. As a result of the above discussion, the impugned order is quashed and set aside and the appeal of the appellant is restored to the file of the Tribunal for disposal on merits and in accordance with law. Accordingly, this appeal is disposed of. All contentions of both sides on merits are kept open.