(2013) 07 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Customs Appeal No. 1 of 2012

Moonlight Auto Ltd. APPELLANT

Vs

Commissioner of Customs (Preventive) RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 298 ELT 498

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Sudeep Singh, for the Appellant; D.D. Sharma, for the Respondent

Judgement

Rajive Bhalla, J.—The appellant''s precise grievance is that the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench

(hereinafter referred to as ''the Tribunal'') has allowed the appeal filed by the revenue without considering or adverting to his written arguments,

which were filed on 16-8-2011, a day before the appeal was decided. Counsel for the appellant submits that an earlier order, dated 25-2-2008,

passed by the Tribunal, was set aside by this Court, by directing the Tribunal to pass a speaking order. The petitioner, thereafter, filed written

arguments, which were received in the office of Tribunal, on 16-8-2011. The appellant made a specific plea in the last paragraph of the written

arguments that the appeal may be decided on the basis of written submissions without his personal presence. The Tribunal has not considered the

written submissions and has instead decided the appeal by recording that the appellant is not cooperating with the Tribunal.

2. Written statement filed on behalf of respondent No. 1, in Court today, is taken on record.

3. Though, counsel for respondent No. 1 is not in a position to deny that the appellant had filed written arguments, a day before the appeal was

decided, it is submitted that the appellant is beneficiary of fraud and even otherwise as it has no case on merits, no useful purpose would be served

by remitting the matter to the Tribunal.

4. We have heard counsel for the parties and perused the impugned order.

5. A perusal of the impugned order reveals that the learned Tribunal has held that the appellant is not cooperating as he has not put in appearance

nor filed an application for adjournment. It appears that written submissions, filed by the appellant containing a prayer that it did not wish to

address arguments in person and the appeal may be decided on the basis of written submissions, was not placed before or brought to the notice of

the Tribunal. The learned Tribunal, therefore, fell into error in recording that the appellant is not cooperating with the Tribunal. This apart, the pleas

raised by the appellant on merits of the controversy have not been considered. The appellant''s plea of bona fide purchase without notice of the

fraud perpetuated by his vendor has not been considered or decided. As a consequence, we allow the appeal, set aside order dated 17-8-2011

and remit the matter to the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi, for adjudication afresh and in

accordance with law. Parties are directed to appear before the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi,

on 2-9-2013. The appeal shall be decided within a month, thereafter.