(2015) 01 AP CK 0036

In the Andhra Pradesh High Court

Case No : C.E.A. No. 36 of 2005

Radiant Cables Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:
Customs Act, 1962 — Section 130

Citation : (2015) 319 ELT 18

Hon'ble Judges : D.B. Bhosale, J;A. Ramalingeswara Rao, J

Bench : Division Bench

Advocate : S. Ravi, Senior Advocate, for the Appellant; Jalakam Sathyaram, Senior SC, Advocates for the Respondent

Judgement

Dilip B. Bhosale, J.—This Customs Excise Appeal under Section 130 of the Customs Act, 1962 is directed against the order dated 27-6-2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, in Appeal No. C/284/2004 whereby the Tribunal dismissed the appeal filed by the appellant against the order dated 31-3-2004 passed by the Commissioner of Customs and Central Excise (Appeals), Hyderabad in appeal No. 34/2004. The point that fell for consideration of the Tribunal was ''whether the appellants, are entitled to the benefit of exemption under notification No. 23/98, dated 2-6-1998 [SI. No. 164 list (17)] on the raw materials imported for manufacture of cables?''

2. Mr. S. Ravi, learned senior counsel, appearing on behalf of the appellant at the outset invited our attention to the order of the Tribunal to contend that the appeal had been disposed of with cryptic order, without considering the materials that were placed before it for consideration. He placed the materials, which were also placed before the Tribunal, before us such as relevant notification, essential certificates, Chapter - 98 and Project Imports in the Customs Tariff Act, 1975 etc. He submitted that the Tribunal ought to have considered these materials in proper perspective and having so contended he prayed for remand of the matter to the Tribunal for consideration of their appeal afresh. He also placed reliance

upon the order of the Tribunal-Chennai in Kiddy Concepts Pvt. Ltd. v. Commissioner of Customs, Chennai - 2002 (148) E.L.T. 768 (Tribunal) to contend that the very same member, who was also the Presiding Member of the Tribunal which passed the impugned order, after considering the judgment of the Calcutta High Court in Asiatic Oxygen Ltd. Vs. Assistant Collector of Customs, (1993) 49 ECR 215 : (1992) 57 ELT 563 , dealing with the similar question, took exactly contrary view. He also placed before us the judgment of the Supreme Court in Zuari Industries Ltd. Vs. Commissioner of Central Excise and Customs, (2007) 117 ECC 11 : (2007) ECR 11 : (2007) 210 ELT 648 : (2007) 5 JT 418 : (2007) 5 SCALE 153 : (2007) 5 SCR 553 : (2007) AIRSCW 3100 : (2007) 5 Supreme 250 in support of his contention and submitted that this judgment also will have a bearing on merits of the case.

3. Having confronted with this, learned counsel appearing for the respondents fairly submitted that the Tribunal did not examine merits of the case and that the order impugned in the present appeal may be set aside and the matter may be remanded with direction to the Tribunal to decide the appeal, within time frame, afresh.

4. In the circumstances and having satisfied that the Tribunal did not consider the entire materials on record, without making any observation on merits of the case, we deem it appropriate to set aside the order of the Tribunal dated 27-6-2005 passed in appeal No. C/284/2004. Order accordingly. The appeal is restored to file. The Tribunal shall endeavour to dispose of the appeal afresh, within a period of six months from the date of receipt of this order, and after giving an opportunity to both the sides to place the entire materials before the Tribunal in support of their case including the judgment of the Supreme Court in Zuari case (supra) and other judgments, if any, in support of their contentions. All contentions on merits are kept open. Learned counsel for appellant is directed to place a copy of this order before the Tribunal within a period of four weeks from today. No costs. Miscellaneous petition pending in the appeal, if any, also stand disposed of.