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(2014) 10 RAJ CK 0043

In the Rajasthan High Court

Case No : Central Excise Appeal No. 5 of 2014

Ranjan Polyesters Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2015) 315 ELT 364

Hon'ble Judges : Prakash Gupta, J;Govind Mathur, J

Bench : Division Bench

Advocate : Sanjeev Johari, Advocates for the Appellant; Jagat Tatia, Advocates for the Respondent

Judgement

1. The Customs Excise and Service Tax Appellate Tribunal Bench, New Delhi by order dated 26-6-2013 dismissed the appeal preferred by the appellant Ranjan Polyesters Limited. Suffice to mention that the appeal was heard and dismissed in absence of the representative of the appellant company. An application to recall the order aforesaid was preferred by the appellant and that came to be dismissed on 2-12-2013 by observing as under:-

"This appeal is 8 years old. Stay order was passed on 4-1-2006. There was a partial deposit of Rs. 85,000/- called for by the stay order. When the appeal reached for hearing on 26-6-2013, the appellant had already availed benefit of interim order for 7 years. If for flimsy reason appeals are restored that shall unwarrantedly burden the Tribunal adding to its pendency. MA (ROA) is dismissed."

While questioning correctness of the order dated 2-12-2013, the submissions of learned counsel for the appellant is that the Tribunal should have examined the cause extended by the appellant for recalling the order dated 26-6-2013 as that was the factor relevant to satisfy genuineness of the reason for absence of the appellant representative.

2. Having considered the argument advanced, we are of the considered opinion

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that this appeal involves a substantial question of law in the terms that, "whether the Tribunal was right in rejecting the application preferred by the appellant for recalling the order dated 26-6-2013 without examining sufficiency of the cause extended for non appearance of its counsel?"

3. Admit. Issue notice.

4. Mr. Jagat Tatia accepts notice.

5. Looking to the narrow amplitude of the controversy involved, we consider it appropriate to hear and dispose of the appeal at this stage, for which learned counsel are having no objection.

6. From perusal of the averments contained in the application for recalling the order dated 26-6-2013, it appears that the representative of the appellant company failed to attend the proceedings before the Tribunal due to his ailment and the surgery availed by him. The Tribunal while rejecting the application aforesaid did not choose to examine correctness of the cause given but dismissed the application for the reason that the appeal was pending from last several years.

7. We are of the considered opinion that the Tribunal should have examined the cause given for recalling the order and not the other issues which as a matter of fact are extraneous for examining the application for recalling earlier order. In view of it, the appeal deserves acceptance. Accordingly, the same is allowed. It is held that the rejection of the application for recalling the order dated 26-6-2013 is bad as the Tribunal did not examined sufficiency of the cause extended for not attending the Court proceedings by representative of the appellant company. The order dated 26-6-2003, thus, is set aside. The Tribunal shall hear the application afresh by providing opportunity of hearing to the parties. Learned counsel for the parties undertakes to appear before the Tribunal on 1-12-2014 to have an appropriate date from the Tribunal for hearing of the application.

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