(2015) 03 KL CK 0172

In the High Court Of Kerala

Case No : R.P. No. 273 of 2015 in W.P.(C) No. 5061 of 2015

Sea Breeze Courier	APPELLANT
Vs	
Commissioner of Central Excise, Customs and Service Tax	RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 323 ELT 461

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : C.P. Mohammed Nias, for the Appellant; Thomas Mathew Nellimoottil, SC, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—This is a petition filed for reviewing the judgment dated 18.02.2015 in the writ petition. The petitioner had approached this Court challenging Ext. P8 order passed by the respondent under the Customs Act, 1962. Although, he had filed Ext. P9 appeal and stay petition before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, he was informed by Ext. P10 defect memo that, he would have to pay 7.5% of the duty confirmed against him by Ext. P8 order, as a condition for maintaining Ext. P9 appeal before the said Tribunal. He was also granted time till 19.02.2015 for complying with the said provisions. It was being aggrieved by Ext. P10 notice, to the extent it directed the petitioner to comply with the condition of depositing 7.5% of the duty confirmed against him by Ext. P8 order, as a condition for maintaining the appeal, that the petitioner had approached this Court through the writ petition, on the contention that the aforesaid condition was an onerous one, and effectively deprived him of the right to appeal under the Statute.

2. When the matter came up for hearing, after considering the submission made by the counsel on both sides, I had disposed the writ petition, by extending the time for complying with the directions in Ext. P10 defect memo that was served on the petitioner, till 20.03.2015, making it clear that, the petitioner would have to make the pre-deposit of 7.5% of the duty confirmed against him by Ext. P8

order, before the Appellate Tribunal on or before that date.

3. In the review petition, the petitioner contends that, the challenge of the petitioner against Ext. P8 order that was passed by the respondent was not specifically dealt with in the judgment disposing the writ petition. It is for recording the contentions of the petitioner against Ext. P8 order, and dealing with the same on merits, that the petitioner has preferred the review petition.

4. I have heard Shri C.P. Muhammed Niyas, the leaned Counsel for the petitioner and Sri Thomas Mathew Nellimoottil, the learned standing counsel for the respondent.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, the specific contentions of the petitioner, with regard to the legality of Ext. P8 order passed by the respondent, was not considered solely because, it was stated in the writ petition itself that against Ext. P8 order, the petitioner had already preferred an appeal and stay petition before the Appellate Tribunal under the Customs Act. In that view of the matter, since this Court was relegating the petitioner to the alternate remedy of filing an appeal before the Appellate Tribunal, it was not considered appropriate to deal with the merits of Ext. P8 order, that was passed by the respondent and which was impugned by the petitioner in the appeal before the Appellate Tribunal. I notice, however, that in a later case that came up for consideration before this Court, this Court, after considering a similar contention with regard to the statutory right of appeal being hedged by onerous conditions, took a view that, in cases where the commencement of the lis was prior to the introduction of the amendment to the Customs Act with effect from August 2014, the assessee''s right of appeal, as per the erstwhile provisions of law, would not be effected by the provisions introduced by the amendment of 2014. In the case of the petitioner also, it is seen that the commencement of the lis was prior to the introduction of the amendment to the Customs Act with effect from August 2014. In that view of the matter, the petitioner would also be entitled to the benefit of the later judgment of this Court referred to above. I, therefore, recall the judgment of this Court dated 18.02.2015, and dispose the writ petition itself with the following observations and directions;

i). It is settled law that the institution of a suit carries with it an implication that, all rights of appeal then in force, are preserved to the parties thereto till the rest of the career of the suit and, further, that the right of appeal that is vested is to be governed by the law prevailing at the date of institution of the suit or proceedings, and not by the law that prevails at the date of its decision or at the date of filing of the appeal. (See: Garikapatti Veeraya Vs. N. Subbiah Choudhury, AIR 1957 SC 540 : (1957) 1 SCR 488 ; Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, AIR 1953 SC 221 : (1983) 13 ELT 1277 : (1953) 4 SCR 987 ; Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, AIR 1967 SC 344 : (1961) 12 STC 219 and Ramesh Singh and another Vs. Cinta Devi and others, (1996) 2 ACC 701 : (1996) ACJ 730 : (1996)

3 AD 376 : AIR 1996 SC 1560 : (1996) 5 JT 543 : (1996) 114 PLR 507 : (1996) 2 SCALE 782 : (1996) 3 SCC 142 : (1996) 2 SCR 1036 : (1996) 2 UJ 61 .

ii). In the instant case, I find that, even in the case of the petitioner, in as much as the lis commenced prior to the introduction of the amendment of 2014, the petitioner would not be required to deposit an amount of 7.5% as required, pursuant to the 2014 amendment to the Customs Act. He would, therefore, have an efficacious alternate remedy before the Appellate Tribunal, where he can file the appeal, together with an application for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by Ext. P8 order. It is not in dispute that, the petitioner has filed the appeal, together with an application for waiver of pre-deposit, before the Appellate Tribunal and the said petitions are produced in the writ petition as Ext. P9. I make it clear that, the petitioner will not be required to make the payment of 7.5% of the duty confirmed against him by Ext. P8 order as a pre-condition for maintaining Ext. P9 appeal and waiver application before the Appellate Tribunal. The appeal and waiver applications filed by the petitioner before the Tribunal will be governed by the statutory provisions as they stood prior to the amendment introduced with effect from 16.08.2014.

iii). The Customs, Excise and Service Tax Appellate Tribunal, Bangalore, before whom Ext. P9 appeal and waiver application have been filed, shall consider the application for waiver of pre-deposit filed by the petitioner, on merits and, thereafter, proceed to hear the appeal itself in due course.

Thus, the review petition is allowed and the writ petition disposed as above.

