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(2014) 04 KL CK 0004

In the High Court Of Kerala

Case No : W.P. (C) No. 9242 of 2014(E)

Valappil Hamza APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : (2015) 322 ELT 255

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : P. Raghunath and Premjit Nagendran, Advocate for the Appellant; Thomas Mathew Nellimoottil, Standing Counsel, Advocate for the Respondent;

Judgement

A.M. Shaffique, J.

1. Petitioners challenge Ext. P4 order in so far as the same came to be disposed of when similar appeals were pending before the Division Bench. Appeal Nos. C/22/2008-SM and C/23/2008-SM were pending before the Customs, Excise & Service Tax Appellate Tribunal which was arising out of the Order-in-Original No. 3/2007, dated 9-5-2007 of the Commissioner, Customs (Preventive), Cochin. With reference to the very same issue, appeals were pending before the Division Bench also as C/388/2007, C/389/2007 and C/390/2007. The matter before the Single Member came up for hearing on 4-11-2013. The petitioners had sent a fax message, Ext. P3 on 1-11-2013 seeking adjournment of the matter on the ground that the same ought to have been heard along with the connected matters pending before the Division Bench. The fax message confirmation report is produced as Ext. P3(a). However,, the Tribunal proceeded to hear and dispose of appeals C/22/2008-SM and C/23/2008-SM without taking note of the request for adjournment. The department appeals were allowed. The main contention urged by the petitioners is that all these appeals ought to have been heard by the Division Bench as the appeals pending before the Division Bench had also arisen out of the Order-in-Original No. 3/2007, dated 9-5-2007. In the aforesaid circumstances, the petitioners seek for appropriate directions to recall Ext. P4

order and for a direction to consider the same along with Appeal Nos. C/388/2007, C/389/2007 and C/390/2007.

2. Learned Standing Counsel appearing on behalf of the department submits that this writ petition is not maintainable in so far as the petitioners have an appellate remedy. Though the petitioners had contended that the fax was sent seeking adjournment, there was no request for adjournment at the time when the matter was heard. In so far as the Single Member of the Tribunal had decided the matter on merits, the petitioners should avail of the appellate remedy, as envisaged under law. Hence this writ petition is liable to be dismissed.

3. Learned Counsel for the petitioners however would submit that on disposal of the appeals C/22/2008-SM and C/23/2008-SM by the Tribunal, the appeals pending before the Division Bench will have the same fate and therefore, no useful purpose will be served in prosecuting the said appeal.

4. This is a peculiar situation where the appeals filed by the Revenue as well as the petitioners ought to have been heard and decided together especially on account of the fact that the appeals had arisen from a common order. When it was brought to the notice of the Single Member of the Tribunal that the appeals were pending before the Division Bench, the said authority ought to have refrained from passing an order on merits. Under these circumstances, I am of the view that Ext. P4 is liable to be interfered with despite the fact that the petitioners have an appellate remedy. There is a peculiar situation in this case by which the petitioners will not be in a position to agitate the matter pending before the Division Bench on account of the orders passed in Ext. P4. Hence, it is necessary in the interest of justice that the petitioners should be given an opportunity to agitate their rights in the appeal and accordingly Ext. P4 is liable to be set aside. In the result, this writ petition is disposed of as under :

"(i) Ext. P4 is set aside.

(ii) The Tribunal shall consider all the aforesaid appeals together and dispose of the same in accordance with the procedure prescribed."