IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.10.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.2169 of 2015
and
M.P.No.1 of 2015

M/s.Healthware Private Limited,
(Formerly known as
M/s.Dornier India Medical
System (P) Ltd.)
Serene Towers, No.8-2-623/A,
4th & 5th Floors,
Road No.10, Banjara Hills,
Hyderabad 500 034. Appellant/Respondent

vs.

1. The Customs, Excise & Service Tax
Appellate Tribunal,
South Zonal Bench, Chennai,
Shastri Bhavan Annexe,
Haddows Road, Chennai 600 006. - 1st Respondent

2. The Commissioner of Customs
(Airport),
Customs House, Chennai 600 001. - 2nd Respondent/Appellant

Civil Miscellaneous Appeal against the final order No.40662/2014 dated 25.9.2014 made in Appeal No.C/173/2004-DB on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant :Mrs.L.Maithili for M/s.L.Maithili Associates

For R2 : Mr.Haja Mohideen Gisthi, Sr.Panel Counsel.

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is by the assessee questioning the ex parte decision of the CESTAT passed in an appeal filed by the Revenue.

2. Heard Mrs.L.Maithili, learned counsel for the appellant and Mr.Haja Mohideen Gisthi, learned counsel for the respondent.

3. The appellant imported two units of Extracorporal Lithotripter and filed two bills of entry dated 30.6.2000. The goods were classified by the Department under tariff heading 9018.19. Two DEPB Scrips dated 31.8.1999 and 26.4.2000 were produced in accordance with the Customs Notification No.34/97. Further, the Director General of Foreign Trade issued a public notice on 7.4.2000, amending para 7.36B of the procedure to the effect that credit under DEPB may be utilised for payment of customs duty and on any item which is freely importable, except capital goods. Therefore, a demand notice for duty was raised upon the appellant to the tune of Rs.14,80,929/-. The adjudicating authority, however, dropped the demand on the ground that the imported items were not capital goods. But, the said decision was reversed by the Commissioner (Appeals) holding that the goods are capital goods and that the appellant was eligible for the benefit of one of those two DEPB Scrips issued prior to the public notice.

4. The Revenue filed an appeal to the CESTAT as against that portion of the order which held that the assessee is entitled to the benefit of DEPB scrips dated 31.8.1999. The appeal was filed way back in the year 2004. On 25.9.2014, the appeal was allowed ex parte on the ground that the assessee neither appeared nor filed an application for adjournment. Aggrieved by the ex parte decision so rendered by the CESTAT, the assessee is before us.

5. In the grounds of appeal, the appellant has indicated the sequence of events atleast from February 2010 upto the date of the decision. The tabular statement filed by the assessee in ground No.9 of the appeal is reproduced hereunder:-

Sl. No.	Date of Intimation Letter	Scheduled date of Hearing	Remarks
1.	25.02.2010	28.04.2010	No Bench Sitting
2.	21.05.2010	14.07.2010	No Bench Sitting
3.	09.08.2010	16.11.2010	No Bench Sitting
4.	No intimation	02.02.2011	No Bench Sitting
5.	01.03.2011	13.05.2011	No Bench Sitting
6.	No intimation	08.07.2011	No Bench Sitting
7.	30.07.2011	07.09.2011	No Bench Sitting
8.	No intimation	29.11.2011	No Bench Sitting
9.	02.01.2012	25.04.2012	No Bench Sitting
10.	19.07.2012	31.05.2012	No Bench Sitting

Sl. No.	Date of Intimation Letter	Scheduled date of Hearing	Remarks
11.		03.09.2013	Adjournment sought by sending letter dated 13.08.13
12.	14.10.2013	24.12.2013	No Bench Sitting
13.	No intimation	25.09.2014	Final order passed.

6. Mr.Haja Mohideen Gishti, learned Standing Counsel for the Department produced a copy of the mail received from the Department asking him to seek time for filing counter/further instructions from the Section concerned. But, we are of the considered view that in a matter of this nature, where an ex parte decision has been rendered by the Tribunal, the prolongation of a decision on the same is not beneficial to either of the parties. After all, the appellant seeks an opportunity to appear before the Tribunal. It is not recorded in the order of the Tribunal that the appellant herein was habitually absented themselves before the Tribunal. In para 2 of the impugned order, it is just stated that the matter was adjourned on earlier occasions and nobody turned up on behalf of the respondent(assessee). But, it is seen from the tabular column given by the appellant herein that after 3rd September 2013, the date on which the adjournment was sought for by the appellant, the case was taken on two occasions viz., on 24.12.2013 and 25.9.2014 and the Tribunal rendered the decision. Therefore, we are of the considered view that one opportunity can be granted to the appellant, especially, in view of the fact that the benefit granted to the appellant by the Commissioner (Appeals) was confined only to one of the scrips, that was issued prior to the public notice issued by the DGFT.

7. In view of the above, the civil miscellaneous appeal is allowed. The order of the Tribunal is set aside. and the matter is remitted back to the Tribunal. The appellant shall, without fail, appear before the Tribunal on the date indicated by the Tribunal without seeking any adjournment as the appeal is a very old one. The Tribunal shall dispose of the appeal within a period of two months from the date of receipt of copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssk.

To

1. The Asst. Registrar,
   Customs, Excise & Service Tax
   Appellate Tribunal,
   South Zonal Bench, Chennai,
   Shastri Bhavan Annexe,
   Haddows Road, Chennai 600 006.

2. The Commissioner of Customs
   (Airport),
   Customs House, Chennai 600 001.

+1 cc to M/s.L.Maithili Associates, Advocates, sr.56818
+1 cc to Mr.S.HajaMohideen Gisthi, Advocate, sr.56888

C.M.A.No.2169 of 2015

gr co
kra 16/11/2015