THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.E.A.No.81 of 2015

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Despite service of notice on the respondent on 10.08.2015, neither are the respondent present before this Court nor has any counsel entered appearance on their behalf.

The Customs, Excise and Service Tax Appellate Tribunal (for short the "CESTAT"), by its order in ST/948/2009-SM dated 26.12.2013, disposed of the appeal preferred by the assessee reducing the penalty imposed on them to Rs.10,000/-. In the order under appeal, the CESTAT recorded that the Revenue had not preferred any appeal against the observation made by the Commissioner of Appeals that the assessee had merely committed a technical error.

Sri P.S.P.Suresh Kumar, Learned Standing Counsel for Central Board of Customs, Excise and Service Tax, would submit that the Revenue had, in fact, preferred an appeal in ST/953/2009; and the CESTAT had disposed of the appeal preferred by the assessee, without deciding the appeal preferred by the Revenue.

As both the assessee and the Revenue had preferred appeals against the order passed by the Commissioner of Appeals, the CESTAT ought to have heard both the appeals together. The appeal preferred by the assessee was decided by the CESTAT on the erroneous premise that the Revenue had not preferred any appeal against the order of the Commissioner of Appeals. We consider it appropriate, therefore, to set aside the order under appeal and to remand the matter to the CESTAT to pass orders afresh both in ST/948/2009-SM and ST/953/2009, after giving both the parties an opportunity of being heard.

The appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, also disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:26.11.2015.

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