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HIGH COURT OF CHHATTISGARH, BILASPUR

TAX Case No. 128 of 2017

(Arising out of order No. A/ 50331/2017 dated 12.01.2017 in Excise Appeal No. 1032 of 2010 of the learned CESTAT)

- M/s Shri Ambika Ispat (India) Private Limited (Now Keshav Sponge & Energy Private Ltd.) Taraimal, Ambikapur Road, District Raigarh (Chhattisgarh).

---- Appellant

Versus

1. The Commissioner Central Excise & Customs, New Central Revenue Building, Civil Lines, Raipur, District Raipur, Chhattisgarh.
2. The Customs, Excise & Service Tax Appellate Tribunal, West Block No. 2, R. K. Puram, New Delhi.

---- Respondents

For Appellant : Shri Ashish Shrivastava and Mr. Animesh Verma, Advocates

For Respondents : Shri Vinay Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

25.08.2017

This appeal is admitted. Shri Vinay Pandey, Advocate appears for the Revenue. The service is complete.

Heard finally on the consent of the parties.

1. The only issue that arise for decision in this appeal under Section

35G of the Central Excise Act is as to whether the CESTAT was justified in dismissing the appeal filed by the assessee on default on account of non appearance of the appellant or its counsel. Hearing the learned counsel for the parties and perusing the materials on record, we see that though the appeal was filed in 2010, there were certain disputes between the department and the appellant as regards the interlocutory relief that should governs parties pending the appeal before the CESTAT. That culminated in order Annexure A/7 dated 13.09.2012, passed by this Court in Writ Appeal 1029/2012. We are told by the learned counsel for the appellant that the condition imposed as per that order has been satisfied by remittance. We have perused the materials produced along with this appeal which discloses, among other things, the grounds of the appeal raised before the CESTAT.

2. Section 35(C) of the Central Excise Act delineates the power of the Appellate Tribunal. Rule 20 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 provides for dismissal of appeal for default and for restoration of those appeals which are dismissed for default. Adopting the reasoning of the judgment of the Hon'ble Supreme Court in **Commissioner of Income Tax v. S. Chenniappa Mudaliar {(1969) 1 SCC 591}** rendered under the Income Tax Act and the Income Tax Appellate Tribunal Rules, the Apex Court decided the case of **Balaji Steel Re-Rolling Mills v. Commissioner of Central Excise and Customs {(2014) 16 SCC 360}** holding that an appeal to which Section 35-C of the Central Excise Act applies cannot be decided

by the CESTAT by dismissing it for default. Applying the ratio of that precedent, the appeal which has been dismissed through the impugned order is eligible to be restored by setting aside the order of dismissal of the appeal.

3. In the result, this appeal is allowed setting aside the impugned judgment and remitting the appeal on which that order have been issued to CESTAT for decision on merits after hearing the parties. It is directed that the parties shall mark appearance before the Tribunal on 3rd October, 2017. No costs.

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (Sharad Kumar Gupta)
Chief Justice **Judge**

Kishore