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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

IA NO. GA/3/2024
In CUSTA/35/2019
COMMISSIONER OF CUSTOMS (PREVENTIVE)
Vs
M/S. KUNJ BIHARI LAL RADHESHYAM METALS PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 11, 2024.

Appearance :
Mr. Kaushik Dey, Adv.
Mr. Kaustav Maiti, Adv.
...for appellant.

The Court :- Heard Mr. Dey, learned standing Counsel for the appellant. None appears for respondent.

This application has been filed to restore the appeal and to be heard and decided on merits. We have gone through the averments set out in the affidavit filed in support of the application and we find that as against the common order passed by the learned Tribunal in the other case the matter has been remanded to the Tribunal for fresh consideration. Therefore, in order to maintain consistency the same order is required to be followed. Therefore, the explanation offered by the department is accepted and the application is allowed and the appeal is restored to file of this court.

Accordingly, GA/3/2024 is disposed of.

We have restored the appeal, consequently the application filed under Section 5 is also restored and the delay in filing the appeal of 76 days is condoned.

This appeal filed by the Customs Department under Section 130 of the Customs Act, 1962 (the Act) is directed against the common order dated 8th March, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Calcutta in Eastern Zonal. Bench, Calcutta in Appeal No. C/79138/2018.

The revenue has suggested the following substantial questions of law:

i) Whether the Learned Tribunal has committed gross error by not appreciating the contents of paragraph 2 of the instruction dated 17.12.2015?

ii) Whether in terms of the instruction dated 17.12.2015 the present case falls under the monetary limit or the Learned Tribunal ought to have heard the matter on merits?

iii) Whether the observation of the Commissioner of Customs (Appeals) and the Learned Tribunal is contrary to the law and liable to be set aside ?

As mentioned above, the present appeal has been filed by the department as against the common order passed by the Tribunal in two appeals filed by the department in appeal nos. C/79148/2018 and cross objection no. CO/75257/19. The order passed in C/79148/2018 was challenged by the department before this Court in CUSTA/37/2019 and the Hon'ble Division

Bench by judgment dated 17th December 2020 set aside the order passed by the learned Tribunal dated 8th March, 2019 and remanded the appeal to the Tribunal for disposal on merits. Since the impugned order has already been set aside in connected matter, different approach cannot be made in the present appeal.

Therefore, following the order passed in CUSTA/37/2019 the appeal is allowed and the order impugned is set aside and the order impugned is set aside and the matter is remanded to the learned Tribunal on the same line as in CUSTA/37/2019.

Consequently, GA/1/2024 and GA/2/2024 are disposed of treating the same as on day's list.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH