IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 16/08/2017.
DATE OF DECISION : 16/08/2017.

Customs Appeal No. 51049 of 2017

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/ TKD (Exp) 194-196/2017 dated 03/04/2017 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

CC (Export), New Delhi — Appellant

Versus

M/s Daya Enterprises — Respondent

Appearance

Shri Govind Dixit, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 55947/2017 Dated : 16/08/2017

Per. B. Ravichandran :-

Revenue is in appeal against order dated 03/04/2017 of Commissioner (Appeals), Customs Airport, New Delhi. By the impugned order, the Commissioner allowed the assessee's claim for refund on limitation and directed the Original Authority to consider the claim and to pass fresh orders. The impugned order relied on the decision of Hon'ble Delhi High Court in the case of **Sony India Pvt. Ltd. vs. CC, New Delhi – 2014 (304) E.L.T. 660 (Del.)**. After extensively reproducing relevant portions of the order of the Hon'ble High Court, the impugned order also noted that the SLP filed by the Department against the above order of the High Court was dismissed by the Hon'ble Supreme Court on the ground of limitation – **2016 (337) E.L.T. A102 (S.C.)**.

2. We have perused the grounds of appeal by the Revenue. The Revenue contested the findings of High Court in **Sony India Pvt. Ltd.** (supra). In fact, the prayer made in the appeal is to the effect whether the judgment of Hon'ble High Court has laid down the correct law and the High Court travelled beyond the question of law framed while dealing with appeal under Section 130 of Customs Act, 1962. It was also mentioned that in a similar matter, the SLP filed by the Revenue in the case of **Willhem Textile** is pending in Hon'ble Supreme Court. On these grounds, the Revenue wants the impugned order to be set aside.

3. We have heard the learned AR. None appeared on behalf of the respondent despite of notice. On plain reading of the grounds of appeal, we find the Revenue is totally misdirected in approaching this Tribunal by challenging the order of Hon'ble High Court alleging that the said order did not lay down the correct position of law. We find such prayer before the Tribunal is

untenable. We are not sitting in appeal against High Court's order. It is objectionable for the Revenue to make such grounds in the appeal. The appeal has apparently been preferred without even understanding basic principles of law. We are not shown any decision of a higher court contrary to the said decision. In view of this, we find the present appeal is devoid of merit. Accordingly, the same is dismissed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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