IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 51605 of 2018

[Arising out of the Order-in-Appeal No. CC(A)/Cus/D-II/ICD/PPG/521/2018 dated 22.03.2018 passed by Commissioner of Customs (Appeals) New Delhi]

M/s. Elevance Overseas LLP. **Appellants**

Vs.

CC, New Delhi **Respondent**

Appearance:
Shri Prem Ranjan, Advocate for the Appellants
Shri Rakesh Kumar, AR for the Respondent

CORAM:
Hon'ble Mr. C L Mahar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/ Decision: 04.09. 2018

FINAL ORDER No. 52924/2018

Per Rachna Gupta:

Present is an appeal directed against the order No. 521/2018 dated 22.3.2018. The brief facts are that the assessment of the Bill of Entry No. 7643324 dated 29.11.2016 has been objected and demand of countervailing duty has been raised. The said demand has been confirmed vide the order in challenge. Being aggrieved, the present appeal has been filed by the appellant.

2. We have heard Shri Prem Ranjan, learned advocate appearing on behalf of the appellant and Shri Rakesh Kumar, learned DR appearing for the Revenue.

3. It is submitted on behalf of the appellant that the identical issue has been sub-judiced before the Hon'ble Supreme Court in the case of ***Prashay Oversea Pvt. Ltd. vs. CC (Exports) Chennai –SLP No. 613-614/2017***. The Tribunal vide ***Final Order No. 55931-55946/2017 dated 11.8.2017*** has relied upon this judgment and said appeal had been disposed of in view of the fact that identical issue is sub-judiced before the Hon'ble Apex Court. Therefore, the present appeal is prayed to be disposed of by relying upon aforesaid judgment.

4. Learned DR, however has mentioned that the benefit of notification No. 30/2004 is otherwise not applicable to the present appeal. The said notification stand amended vide Notification No. 37/2015. Learned DR has also relied upon the order passed by Hon'ble High Court of Madras in the case of ***CC(Exports) Chennai vs. Prashray Overseas Pvt. Ltd. [2016 (338) ELT 44 (Mad)***]. Appeal is accordingly prayed to be dismissed.

4. After hearing both the parties and perusing the records as well as the order and the case laws relied upon by the parties, we are of the opinion that Hon'ble High Court at Madras has already denied the

benefit of Section 30/2004 to the appellant. Further, this is an admitted and acknowledged fact that the issue involved herein is identical to the said case which is still pending adjudication before the Hon'ble Supreme Court, on account of an appeal filed against the order of Hon'ble Court at Chennai in the case of ***Prashray Oversas Pvt Ltd. (supra).*** We are of the opinion that since the matter is pending consideration before the Hon'ble Apex Court, the present appeal shall not be decided on merits. However, a liberty to both the parties can be granted to come again after the final verdict of the Hon'ble Supreme Court, within the prescribed time and as a result, we are hereby disposing the present appeal with the said liberty.

(Dictated in the open Court)

(C L Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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