IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. C/387/2008

(Arising out of Order-in-Appeal No. 41(DEPB)/2018 (JNCH) dated 31.01.2018 passed by the Commissioner of Customs (Appeals), Nhava Sheva).

M/s Prashray Overseas Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs (Import), Nhava Sheva	Respondent

Appearance:

None	for Appellant
Shri Chatru Singh, Asstt. Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 12.03.2018

Date of Decision: 22.03.2018

ORDER NO. **A/85809/2018**

Per: Ramesh Nair

The issue involved in the present case is that whether appellant is entitled for the exemption Notification No. 30/2004-CE dated 9.7.2004 by which the exemption from excise duty is provided subject to non-availment of CENVAT Credit on the inputs or capital goods and whether this notification can be made applicable in respect of the goods imported for the purpose of exemption from CVD.

2. None appeared on behalf of the appellant despite notice.

3. Shri Chatru Singh, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, at the outset, submits that this identical issue has been decided in the appellant's own case by Hon'ble Madras High Court reported at 2016 (338) ELT 44 (Mad.). Therefore, the issue is no longer *res integra.*

4. Having considered the submissions made by the learned AR and perusal of the records, we find that the issue involved is whether the goods imported by the appellant is exempted from payment of CVD by applying the excise exemption Notification No. 30/2004-CE dated 9.7.2004. In the said notification, condition was provided that the manufacturer should not avail the CENVAT Credit on the inputs or capital goods used for manufacture of goods on which the exemption is claimed. In the facts of the present case, the goods are exported, hence the condition of non-availment of CENVAT Credit on inputs and capital goods does not get fulfilled. In the appellant's own case, on an identical issue, the matter was decided in favour of the Revenue as cited supra, therefore, the issue is no longer res integra.

5. Accordingly, following the ratio of the judgment of Hon'ble Madras High Court, we uphold the impugned order and dismiss the appeal filed by the appellant.

(Pronounced in Court on 22.03.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha