Commissioner of Cus. (P) Vs. K.G. Plastic Industries Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/32345

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Sep-19-2003

Reported in : (2004)(165)ELT351Tri(Kol.)kata

Judge : A Wadhwa, A T V.K.

Appellant : Commissioner of Cus. (P)

Respondent : K.G. Plastic Industries Pvt. Ltd.

Judgement :

1. Vide the captioned Miscellaneous Application, the Revenue has made a prayer for staying the operation of the Tribunal's Order No.A-1297-98/Cal/2001, dated 21-11-2001. It is seen that subsequent to passing of the said Order, the respondents, M/s. K.G. Plastic Industries Pvt. Ltd. moved an application for implementation of the said Order of the Tribunal, which was disposed of vide Order No.M-403/KOL/2003, dated 8-7-2003, directing the Revenue to implement the Order within a period of one month from the date of passing of the Order. As such, in terms of the said Order, the Revenue was to give effect to the Tribunal's Order by 8-8-2003. Instead of implementing the Tribunal's Order, the Commissioner has moved the present Application by submitting that they have moved a Reference Application against the said Order of the Tribunal before the Hon'ble High Court of Kolkata.

2. We note that the respondents vide their letter dated 8-9-2003 has intimated that the Reference Application filed by the Revenue before the Hon'ble High Court of

Kolkata, stands dismissed for default. At this stage, Shri A.K. Mondal, learned S.D.R. for the Revenue informs us that an application for restoration of the said Reference Application has since been filed in the Hon'ble High Court.

3. We find that mere filing of a Reference Application in the High Court cannot be a ground for staying the operation of the Tribunal's Order, which has been passed in the year, 2001. There is no justification on the part of the Commissioner to ask for staying the operation of the Tribunal's Order which does not stand implemented by them even after the passing of the two Orders by the Tribunal. We do not find any merits in the Revenue's prayer and reject the Miscellaneous Application with a direction to the Commissioner to implement the Order within a period of one month from today. We also make it clear that failure on the part of the Revenue to implement the Order would result in reference of the Contempt Proceedings against the Commissioner concerned to the Hon'ble High Court. The Commissioner is accordingly directed to report compliance on 24-11-2003.