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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-2004

Reported in : (2005)(179)ELT501TriDel

Judge : K Usha, N T C.N.B.

Appellant : Gail (India) Ltd.

Respondent : Cce

Judgement :

1. When find that application for stay came up for hearing, we find that the appeal itself can be disposed of since the issue raised herein is already covered in favour of the appellants by the decision of this Tribunal and affirmed by the Hon'ble Supreme Court.

2. The dispute that has come-up for consideration is whether lean gas has to be classified under Tariff Heading 2711.29 as proposed by the Revenue or whether it would come under 2711.21 as claimed by the appellants. The very same issue has come-up for consideration by this Tribunal in Oil India Ltd. Vs. CCE (2002(51) RLT 1030).

3. In the above decision. the Tribunal has taken the view that since lean gas has to be treated as natural gas it has to come under 2711.21 and not under Heading 2711.29. The matter was taken in appeal by the Revenue before the Supreme Court. By order dated 7th February, 2003, the Hon'ble Supreme Court dismissed

the Civil appeal both on the ground of delay as well as on merits.

4. Ld. Counsel for the appellants brought to our notice order No.96/Commr./03-04 Dated 30.01.2004 in the appellants own case in respect of a different period passed by the commissioner of Central Excise, Raigad wherein he has followed to the decision of this Tribunal in Oil India Ltd. The deptt. went in appeal before Supreme Court. The Hon'ble Supreme Court decided the matter in favour of the assessee and the said order of the Supreme Court has been accepted by the Board of Central Excise, Customs. Even though we are not able to envisage a situation where the Board is empowered not to accept a decision of the Supreme Court, we are referring to the above sentence only to show that the fact of the issue being settled was in the knowledge of the department.

We find no justifiable reason given by the Commissioner in the present case for not following the ratio of the decision in Oil India Ltd. The reluctance or refusal on the part of the officers to follow the settled legal position will lead to harassment of assesseees and burdening this Tribunal with appeals which could have been avoided.

5. In the result, we set aside the order impugned and allow the appeal.

A copy of the order will be sent to the Chairman, CBEC.

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