Commissioner of Customs (i) Vs. Associated Marbles Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-29-2007

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Commissioner of Customs (i)

Respondent : Associated Marbles Co.

Judgement :

1. The applications filed by the Revenue for disposal of the above appeals by way of remand as earlier, the appeals filed by the importers against the same order have already been sent back by way of remand, are dismissed for the reasons recorded below: Against the impugned orders passed by the Commissioner of Customs, the importers had filed appeals before the Tribunal which were disposed of by the Order No. A/531 to 555/05/C.II dated 4-7-2005 by way of remand. The Revenue preferred Appeal Nos. C/1071/05 & C/1082/05 against the same impugned orders on 20-9-2005 i.e. after the disposal of the importers' appeals by the Tribunal. In such circumstances, the appeals filed by the Revenue is to be treated as not maintainable in the light of the Tribunal's order No. A/55-77/WZB/2007/C.II dated 15-12-2006, the relevant portion is reproduced below: 4. After considering the submissions made by both sides and after going through the larger bench decision of the Tribunal in the case of LML Ltd., we find that the reference to the review date by the Board in the said decision is in the peculiar facts of their case.

Otherwise, the ratio laid down by the larger bench is that, in as much as the impugned order has already merged with the final order passed by the Tribunal, the appeals filed by the Revenue cannot be entertained. Admittedly in the present case, when assessees' appeals were disposed of on 4-7-2005, there was no appeal filed by the Revenue against the said decision. The impugned order has been merged with the Tribunal's order on 4-7-2005 itself. Any subsequent challenge to the said order by the department by way of filing appeal there against cannot be entertained in as much as the impugned order already stands set aside by the Tribunal's order dated 4-7-2005 and having merged with the said Tribunal's order, can be said to be non-est. Similarly, in the case of Bhagwati Ispat Ltd. supra, we find that the Tribunal observed that since on the date of decision of the Tribunal. There was no appeal filed by the Revenue, the same cannot be entertained.

5. In view of the above, we hold that the present appeals filed by the Revenue are not maintainable. The same are accordingly dismissed. The Misc. applications also stand disposed of.

2. Following the ratio of the above order, we dismiss the appeal Nos.

C/1071 & 1082/05 filed by the Revenue as not maintainable.