(2013) 12 CAL CK 0027

Calcutta High Court

Case No: G.A. Nos. 2674 and 2675 of 2013 and C.U.S.T.A. No. 3 of 2013

Naitik Vinimay Pvt. Ltd.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: Dec. 23, 2013

Citation: (2014) 303 ELT 518

Hon'ble Judges: Jyotirmay Bhattacharya, J; Girish Chandra Gupta, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. Being satisfied with the grounds made out in the petition, the delay in preferring the appeal is condoned. The appeal is taken up for hearing.

2. On June 4, 2012, the original order was passed. Aggrieved by the said order, the assessee preferred an appeal. During the pendency of the said appeal, the Department applied for review of the original order. The application for review was dismissed on September 21, 2010. The appeal itself was disposed of on October 27, 2010. After disposal of the appeal, the application for review was dismissed on the ground that--"I have to further note that with the passing of this order-in-appeal, the original order against which the present Review Application has been filed has got merged with this order-in-appeal."

3. Aggrieved by the aforesaid order, the Revenue preferred an appeal, both against the order dated October 27, 2010, copy whereof was issued on November 3, 2010, as also the order dated September 21, 2010, copy whereof was issued on September 28, 2010.

4. The learned Tribunal, relying on a judgment of the Hon''ble Supreme Court in the case of Pearl Drinks Ltd. 2010 (255) E.L.T. 485 (S.C.), held that the doctrine of merger does not apply.

5. Aggrieved by the order of the Tribunal, the assessee has come up in appeal.

6. We are convinced that the Tribunal was clearly wrong. In the case of Pearl Drinks Ltd., the Apex Court did not opine that the doctrine of merger does not apply. What had happened in that case was that the assessee''s appeal, which was heard and disposed of by the Tribunal, concerned only two out of the eight heads. Whereas the admissibility of the deduction in respect of the balance six heads was questioned in an independent appeal filed by the Department. It is in these circumstances that Their Lordships held that the order disposing of the appeal of the assessee could not preclude the hearing of the appeal filed by the Department. That situation was altogether different.

7. In the case before us, the original order dated June 4, 2010 against which the review was sought, was no longer in force after the appellate order was passed on September 21, 2010, issued on September 28, 2010. In the circumstances, we are also of the opinion that after the appellate order was passed, not only the original order merged into the appellate order, but all points with regard thereto became res judicata. Therefore, it was no longer open for review. Therefore, the order dismissing the review application was unexceptionable. The Tribunal, however, should have disposed of the appeal against the order dated September 21, 2010 including the question of condonation of delay which the Tribunal did not touch.

8. Therefore, the order under challenge is set aside. The matter is remanded back to the Tribunal for the limited question of considering the prayer for condonation of delay and in case such prayer is allowed, for hearing of the appeal against the order dated September 21, 2010, issued on September 28, 2010, on merits. The appeal and all the connected applications are accordingly disposed of.