

(2013) 01 DEL CK 0052

In the Delhi High Court

Case No : Cus. A.A. No. 2 of 2013, W.P. (C) 6841 of 2012 and CM 17835 of 2012

Air India Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 2 AD 75 : (2013) 197 DLT 360 : (2013) 18 GSTR 421

Hon'ble Judges : R.V. Easwar, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Manoj Arora with Ms. Shaista Arora and Mr. Siddharth Shankar, for the Appellant; Sweety Manchanda for the Respondent No. 1, Satish Kumar with Ms. Sonia Sharma for the Respondent Nos. 2 and 3, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The learned counsel appearing on behalf of Air India Limited makes an oral request that this writ petition be treated as an appeal u/s 130 of the Customs Act, 1962 inasmuch as the order impugned is an order dated 30.04.2012 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (CESTAT) in Customs ROA Application No. 41/2011 in Customs Appeal No. 538/2007. According to the learned counsel, the impugned order dated 30.04.2012 is an order passed in appeal by the Appellate Tribunal (CESTAT). The learned counsel for the respondent has no objection to the writ petition being converted into an appeal u/s 130 of the said Act. Consequently, we direct the Registry to re-number this writ petition as Cus. Act Appeal u/s 130 of the said Act. The grievance of the appellant is that the impugned order restores Customs Appeal No. 538/2007 which had been dismissed by virtue of a final order No. C-95/11 dated 18.02.2011 on the ground that the clearance of the Committee on Disputes had not been obtained. The order passed on 18.02.2011 is as under:-

Revenue has filed an application for early hearing of their appeal on the ground that more than 45 months have been passed since filing of appeal before this Tribunal and the same has not been heard, a huge amount of Rs. 90 lakhs is involved, so the matter be heard on out, of turn basis.

2. Heard and considered.

3. We do agree with the appellant that although 45 months have passed the appeal has not come up for hearing. It is prime duty of the appellant, before filing appeal before this Tribunal against any public sector undertaking to obtain the necessary clearance from COD as held by the Hon'ble Supreme Court in the case of ONGC. We have observed that more than 3 years have been passed, departmental officers had not even pursued to obtain clearance from COD till date, which shows lethargic attitude of the officers. Even this application is also filed for early hearing of appeal without applying for clearance from COD which means the department is not interested in pursuing this appeal also. After taking note of that, we allow this application for early hearing of appeal and are taking up the appeal for disposal today itself.

4. As we find that the appellant i.e. Revenue has failed to obtain necessary clearance from COD to contest the matter before this Tribunal, the appeal is dismissed for want of COD clearance, with liberty to the appellant to come up before this Tribunal after obtaining necessary clearance from COD. Appeal is disposed of in above manner.

5. Misc. application allowed and appeal dismissed.

2. It is pertinent to note that the Tribunal, while dismissing the appeal for want of COD clearance, granted liberty to the revenue to come up before the Tribunal after obtaining necessary clearance from the Committee on Disputes and that the appeal was disposed of in that

3. Sometime thereafter, the revenue filed the said Customs ROA Application No. 41/2011 seeking revival of the appeal in view of the Supreme Court's decision in the case of Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, , which is a Constitution Bench decision. It is relevant to note that the said decision of the Supreme Court was rendered on 17.02.2011, that is, prior to the date on which the appellant's appeal had been dismissed (on 18.02.2011) on the ground of want of COD clearance. The Supreme Court in Electronics Corporation of India Limited (supra) observed and held as under:-

9. The idea behind setting up of this Committee, initially, called a "High-Powered Committee" (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. [see : para 3 of the order dated 7.1.1994 (supra)] Whilst the principle and the object behind the aforesaid Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate

that on same set of facts, clearance is given in one case and refused in the other. This has led a PSU to institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various Orders reported as (i) 1995 Supp (4) SCC dated 11.10.1991, (ii) Oil and Natural Gas Commission Vs. Collector of Central Excise, (iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, .

10. In the circumstances, we hereby recall the following Orders reported in:

- (i) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise,
- (ii) Oil and Natural Gas Commission Vs. Collector of Central Excise,
- (iii) (2007) 7 SCC 39 dated 20.7.2007

4. Thus, on and from 17.02.2011, there was no necessity for obtaining any clearance from the Committee on Disputes. The order dated 18.02.2011 was passed in ignorance of the Supreme Court decision of 17.02.2011. There are justifiable reasons as to why the Tribunal passed that order because it was just one day after the decision of the Supreme Court in the case of Electronics Corporation of India Limited (*supra*). However, the fact remains that on and from 17.02.2011, there was no requirement for obtaining a clearance from the Committee on Disputes. Therefore, as the law declared by the Supreme Court stood on 18.02.2011, the Tribunal was not correct in dismissing the revenue's appeal. The Tribunal has only rectified that mistake by allowing the revenue's said Customs ROA Application No. 41/2011 by reviving the appeal for hearing on merits. We see no infirmity in the impugned order dated 30.04.2012 and, in any event, no substantial question of law arises for our consideration.

The appeal is dismissed.