

(2015) 04 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 1104 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Quality Exports and Chemicals

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 319 ELT 243

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radha Krishnan, Senior Advocate, B. Sunita Rao, Arguing Counsel, Aruna Gupta, Anurag and B. Krishna Prasad, for the Appellant; S.K. Bagaria, Sr. Adv., Manjula Gupta and Kumar Ajit Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Keeping in view the nature of order which we propose to pass in this appeal, it may not be necessary to state the factual matrix in detail as well as orders passed by the CEGAT or the High Court. Suffice it is to say that the Department had issued show cause notice dated 3-1-1996 proposing a demand of Rs. 53,55,862 as Central Excise duty on clearing goods valued at Rs. 2,71,54,179/-. According to the Department these goods were cleared without payment of excise duty. It was the case of the Respondent that unit was closed. As per the Department, on inspection on premises it was found that the production was still going on. Some documents particularly certain GRs became the basis of the issuance of the show cause notice. The Commissioner passed the Order-in-Original confirming the demand and also imposed penalties. The order was affirmed by the Mukul Kumar Gupta vs. Commissioner of Central Excise 1999 (85) ECR 706 which was challenged by the Respondent by filing writ petition in the High Court. The High Court remanded the case back to the CEGAT with the directions to hold the enquiry as to whether those GRs could be the basis of the demand and also gave the opportunity to the Respondent herein to file the

documents in support thereof Quality Exports and Chemicals Vs. CEGAT, (2001) 73 ECC 665 : (2000) ECR 564 : (2000) 122 ELT 361 .

2. After the remand, when the matter was referred to the CEGAT, the Respondent had filed number of documents which included the affidavits taken from the consignor of the said GRs. Some banking documents in support thereof were also filed. The CEGAT after examining the matter once over again, dismissed the appeal of the Respondent [2001 (135) E.L.T. 430 (Tri.-Del.)] . The Respondent again filed the writ petition which has been allowed by the High Court vide impugned judgment Quality Exports and Chemicals Vs. CEGAT, New Delhi, (2002) 140 ELT 362 .

3. The High Court, no doubt, has remarked that the CEGAT did not look into the various documents which were produced by the Respondent and did not record the statement of the consignors and consignees who had given the affidavit, etc. To this extent, the High Court may be justified. However, if the matter was not dealt with by the CEGAT affirmatively, without scrutiny of the relevant documents, the only option for the High Court was to remit the case back to the authorities below for fresh consideration in the light of documents filed by the Respondent. On the contrary, the High Court proceeded to decide the issue on the premise that documents filed by the Respondent are authentic and treating the case put forth by the Respondent as gospel truth. That cannot be countenanced.

4. In such a situation, we feel that the matter should be relegated to the Commissioner for holding fresh enquiry after considering the documents produced by the Respondent and recording the evidence wherever it is required.

5. The impugned order passed by the High Court is accordingly set aside and the matter is remanded back to the Commissioner for fresh adjudication leaving all issues open. The Appeal is disposed of accordingly.