

(2015) 10 SC CK 0098

In the Supreme Court Of India

Case No : Civil Appeal No. 5007 of 2007 and C.A. Nos. 6718-6720, 6722-6724 of 2008

Commissioner of Central Excise, Goa

APPELLANT

Vs

Bhagyanagar Metals Ltd.

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 325 ELT 481 : (2016) 53 GST 75

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : A.K. Panda, S.K. Bagaria, Sr. Advocates, T.M. Singh, B. Krishna Prasad, Rupesh Kumar, Jitin Singhal, Kumar Ajit Singh and Pratik, Advocates, for the Appellant

Final Decision : Partly Allowed

Judgement

1. Out of the three appeals which have come up for hearing, two are filed by the Assesseees and one by the Department. Though the issue is common, only the periods are different. Since the imports were of different ports, it had given rise to three proceedings for which show cause notices were issued. The issue pertains to undervaluation of the cellular telephones which were imported by the two Assesseees herein. These cellular phones were operated under the CDMA technology. The Assesseees had sought to clear the goods by classifying them under Custom Tariff Heading 8525.20.17 though there was a dispute in this behalf also. The same was ultimately resolved by court in favour of the Assesseees.

2. Along with the cellular phones, the Assesseees had also imported CD-ROMs (Software) which according to the Assesseees were not the integral part of the phones but were meant for upgradation of the cellular phones in future as and when required. The dispute is as to whether the value of the said software was to be included while arriving at the transaction value of the cellular phones and for the purpose of payment of duty.

3. Whereas the Department wants to include this value of software, the Assesseees are resisting that. In the appeal which is filed by the Department, show cause notices were issued for inclusion of the value of the software. As mentioned above, in these show cause notices, the Department has also sought to change the classification of the goods. While the issue about classification was decided by this Court, insofar as the second issue of inclusion of value of software was concerned, the same was remitted back to the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") for fresh consideration.

4. After the remand, the CESTAT has decided the issue in favour of the Assesseees. While coming to this conclusion, the CESTAT has held that since the cellular phones are complete equipments in themselves, the software cannot be treated as integral part of the cellular phones and therefore, value thereof cannot be included. Against that order, the Department has filed the appeal.

5. It so happened that when these proceedings were pending, certain other information came to the notice of the Department on the basis of which further show cause notices were issued by different Commissionerates.

6. One of the pieces of evidence which came to the notice of the Department was that as far as foreign exporter is concerned, it wanted to sell the goods, viz., cellular phones and software as one package with single invoice but the splitting thereof was done at the instance of the Assesseees. It was also found by the Department that Tata and Reliance had imported cellular phones and software as one item at one price and paid the duty accordingly. Suffice is to state that on the basis of these evidences, the CESTAT has decided the cases in favour of the Department and it is for this reason that two appeals by the Assesseees are preferred.

7. Having regard to the aforesaid situation, it is suggested by Mr. S.K. Bagaria, learned Senior Counsel appearing for the Assesseees, that better course of action would be to send the matters back to the CESTAT which should be decided by a Larger Bench.

8. We may accept the aforesaid proposal but while doing so it has to be necessarily directed that the evidence which has surfaced later on and relied upon by the Department in other show cause notices shall be considered as common evidence in all these cases.

9. Accordingly, the impugned decisions of the CESTAT in these appeals are set aside. The matter is remitted back to the CESTAT with request to the President, CESTAT to constitute a Larger Bench and decides the matters afresh on the lines specified above. We would appreciate if the Larger Bench decides these matters within a period of one year from the date of receipt of the copy of this order. The appeals are, accordingly, disposed of.