(2014) 03 BOM CK 0250

In the Bombay High Court

Case No : Customs Appeal No. 31 of 2013

Commissioner of Cus. (EP) APPELLANT

Vs

National Steel and Agro Industries Ltd. RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Citation : (2015) 322 ELT 690

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : A.S. Rao and S.D. Bhosale, Advocate for the Appellant; V. Sridharan, Sr. Advocate and Jas Sanghavi i/b PDS Legal, Advocate for the Respondent;

Judgement

1. This appeal challenges the order passed by the Commissioner of Customs and Service Tax Appellate Tribunal dated 1st November, 2012 allowing the Appeal by the respondent-assessee, and quashing the order impugned in the said Appeal. Mr. Rao, learned counsel appearing on behalf of the Revenue submits that the order passed and impugned in this Appeal raises several substantial questions of law. He submits that when the Tribunal has remanded the matter back to the Commissioner for de novo consideration, then, nothing can be said to be concluded by such an order. It was open for the Commissioner to re-adjudicate the show cause notice and in its entirety. The Tribunal has erroneously held that the remand was for some specific and limited purpose. In such circumstances, this appeal deserves to be admitted.

2. On the other hand, Mr. Sridharan, learned Senior Counsel appearing for the respondent submits that the matter was adjudicated and in the earlier round, the Tribunal passed an order on 19th May, 2011 for remanding the matter. That was for a limited purpose. The Tribunal did not permit re-opening of any concluded issue. Rather the Tribunal concluded the issue as to whether the activity of the respondent-assessee amounts to manufacture. The remand was for a specific purpose and only to co-relate the utilization of the imported materials with the terms of the Advance Licensing Scheme. In such circumstances, the other issue

which was concluded could not have been re-opened and the Tribunal rightly interfered in such an exercise of the adjudicating authority. The appeal therefore does not deserve to be admitted as it does not raise any substantial question of law.

3. We have with the assistance of learned counsel appearing for the parties perused the order passed on 28th February, 2012 by the Commissioner of Customs (EP), New Customs House, Mumbai. We have also perused the order passed by the Tribunal and impugned in this appeal. The Tribunal had clearly concluded the issue that the activity of the respondent-assessee could be termed as "manufacture". In these circumstances, the only limited issue and which was being dealt with by the Tribunal is whether the assessee has produced documents to satisfy that the imported materials under the Advance Licensing Scheme have been correctly utilised as per the terms and conditions of the scheme read with relevant notifications.

4. We have carefully perused the order passed by the Tribunal and of remand. The sentence that Mr. Rao reads cannot be read and seen in isolation. The entire order of remand must be looked into, and so considered, does not enable the adjudicating authority to re-open the proceedings concluded by the order of the Tribunal dated 19th May, 2011. The remand was for a limited purpose. In the teeth of a restricted order of remand, the adjudicating authority could not have travelled beyond it. The Tribunal noticed in the order under appeal that the adjudicating authority did travel beyond its earlier direction. In other words, the remand order was utilised to re-open the proceedings in their entirety which has been found to be not permissible. In these circumstances, we are of the opinion that the present appeal does not raise any substantial question of law. It is accordingly dismissed. Respondent''s Advocate undertakes to file vakalatnama within a period of two weeks.