(2015) 10 SC CK 0089

In the Supreme Court Of India

Case No : Civil Appeal No. 3745 of 2007

JSW Steel Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:
Customs Act, 1962 — Section 61(2), 72

Citation : (2015) 325 ELT 629 : (2016) 53 GST 33

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

Bench : Division Bench

Advocate : S.K. Bagaria, Sr. Advocate, Gaurav Juneja, Shikhar Srivastava, K. Ajit Singh, Advocates and Khaitan and Co., for the Appellant; K. Radhakrishnan, Senior Advocate, Shankar Divate, Arijit Prasad, Sunita Rani Singh and B. Krishna Prasad, Advocates, for the R

Final Decision : Dismissed

Judgement

1. The Appellant-Assessee herein entered into a contract dated 10-4-1996 with one M/s. China Iron & Steel Industry and Trade Group Corporation, Beijing, China, for supply and installation of Air Separation Plant (ASP). When the goods arrived in India, the Appellant filed Bill of Entry on 25-6-1997 for warehousing of these goods. The same was permitted on execution of required bond by the Assessee. There was a specific period allowed within which the Appellant had to remove the goods for home consumption. These goods were removed from time to time. Since the Appellant could not remove the goods within the original period of warehousing, he sought extensions thereof as well. The extended period expired on 31-3-2002. During this period, the goods which were warehoused were removed substantially but still some goods remained to be cleared. As these goods were not cleared by the period permitted, the remaining goods were treated as unauthorised goods warehoused. It resulted in Show Cause Notice dated 30-3-2005 whereby a demand of duty of Rs. 3,07,65,945/- was raised in respect of uncleared goods which lay in the warehouse beyond the extended period by invoking the provisions of Section 72 of the Customs Act,

1962 (hereinafter referred to as ''Act''). The demand raised in the Show Cause Notice along with interest and penalty was confirmed. We may mention here that the duty amount was paid by the Appellant on 29-8-2003 but without any interest. This amount was adjusted in the Show Cause Notice itself. The Appellant preferred appeal against the said order before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') which also dismissed the appeal vide orders dated 5-4-2007 2007 (215) E.L.T. 236 (Tri. - Chennai)] .

2. Mr. S.K. Bagaria, learned Senior Counsel appearing for the Appellant, fairly conceded that the case is covered by the judgment of this Court in Kesoram Rayon (A Unit of Kesoram Industries Ltd.) Vs. Collector of Customs, Calcutta, . However, he endeavored to argue that the said judgment does not depict the law correctly and, therefore, made a fervent plea to refer the matter to Larger Bench.

3. After hearing learned Senior Counsel for both the sides on this aspect, we are of the view that Kesoram Rayon lays down the law correctly and there is no need to refer the matter to Larger Bench.

4. Since the matter is covered by Kesoram Rayon, this appeal has to fail on this aspect.

5. Another issue which is raised by Mr. Bagaria is that there are wrong calculations of the interest which is sought to be charged. In this behalf, two infirmities are pointed out which are as follows:-

(1) It is stated that in terms of Sub-section (2) of Section 61 of the Act, the interest could be collected only for the period from the expiry of the initial warehousing period of one year till the date of payment of duty. He has pointed out that the interest is charged from the beginning, i.e., 27-6-1997 itself, whereas the liability to pay interest arose only from 27-6-1998.

(2) Second error which is pointed out is that higher rate of interest is charged than the interest which was prevalent during the said period. This is demonstrated as under:

"Department Calculation

Calculation with Interest Free Days

Mr. Bagaria is right in his submissions on both these counts. Therefore, while dismissing the appeal, insofar as interest is concerned, we direct the Commissioner to recalculate the interest. He may complete this exercise within one month from the date of receipt of the copy of this order and indicate the exact amount of interest which is payable by the appellant. Further, the Commissioner would be entitled to adjust the sum of Rs. 2 crores which has already been paid in this behalf. The balance amount shall be paid by the appellant within two months from the date of communication of the order by the Commissioner. On payment of the amount of interest, the Bank Guarantee furnished by the appellant shall stand discharged.