(2015) 06 MAD CK 0507

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1124 of 2015

Karnataka Power Corporation Limited	APPELLANT
Vs	
The Assistant Commissioner of Customs and Others	RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Citation : (2015) 323 ELT 303 : (2015) 52 GST 517

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : Karthik Ranganathan, for the Appellant; Devendran, Advocates for the Respondent

Judgement

R. Sudhakar, J—This Civil Miscellaneous Appeal is filed by the Karnataka Power Corporation, which is a Government of Karnataka undertaking. It is engaged primarily in the installation, maintenance and operation of power generating units in the State of Karnataka. As against the rejection of the refund claim by the Adjudicating Authority as well as by the Commissioner (Appeals), the appellant filed an appeal before the Tribunal on 25.09.2004. On the first hearing date, i.e., on 12.1.2001, the Tribunal dismissed the appeal holding as follows:

The assessee being an undertaking of the Government of Karnataka, clearance from the Committee on Disputes is required to pursue the appeal. No clearance is on record and the appeal is an old one. We, therefore, dismiss the appeal for want of COD clearance with liberty to the assessee to apply for restoration in the event of clearance being granted.

2. Subsequent to the order of the Tribunal, the Supreme Court, in the case of Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 , vide judgment dated 17.2.2011, held that the decision in the

case of Oil and Natural Gas Commission and Another vs. Collector, 1992 (61) ELT 3 (SC) had outlived its utility and therefore, it had to be recalled.

3. It was pointed out by the appellant that the issue of getting clearance from the COD and their instrumentalities was brought in by an order dated 20.7.2007 in the case of Oil and Natural Gas Commission v. Collector of Central Excise. Despite the fact that the decision in the case of Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 dispensed with the requirement of clearance from COD, it appears that the appellant had been pursuing the matter before the COD vide series of correspondences, viz., on 21.2.2011, 04.03.2011 and 27.04.2011. Thereafter, the appellant filed a restoration application on 30.5.2011 based on the decision of the Supreme Court before the Tribunal. The Karnataka Government on 20.12.2011, clarified that the COD functioning the Secretariat stood wound up under the orders of the Supreme Court, w.e.f., 17.2.2011. On 31.7.2012, the Tribunal dismissed the restoration application holding as follows:

"On perusal of the record we find that this appeal was filed by the applicant in 2004. At that time, as per the decision of ONGC of the Hon''ble Apex Court, the appellants are required to obtain clearance from the Committee on Disputes and at the time of disposal of their appeal the law was prevailing and their appeal was dismissed for want of COD clearance with the liberty to the appellant to file for restoration in the event of clearance being granted. Admittedly, no clearance was produced by the appellant and when this dismissal order of their appeal was passed the decision of ONGC case was in operation. Therefore, we do not find any merit in the application for restoration of the appeal. Accordingly, the same is dismissed."

4. Challenging the above-said decision of the Tribunal, the present appeal has been filed raising the following substantial questions of law:

"1. Whether the CESTAT was right in dismissing the restoration application filed by the appellant/petitioner herein in C/ROA/35/2011 on 31.05.2011 on the ground that the appellant/petitioner herein has not obtained the approval from the Committee on Disputes (COD) at the time of filing the appeal before it in C/338/2004 without appreciating the point that the Committee on Disputes system itself has been abolished by the Supreme Court in its judgment Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 .

2. Whether the CESTAT was right in not appreciating the fact that at the time of

filing of the appeal by the appellant/petitioner herein in C/338/2004 that the approval from Committee on Disputes was not required at all as the Supreme Court in Oil and Natural Gas Commission and Another vs. Collector, 1992 (61) ELT 3 (SC) directed that only matters involving central government, its departments and PSUs of Central government required the approval of Committee on Disputes to file cases before courts and tribunals."

5. Heard learned counsel appearing for the appellant and the learned Standing Counsel appearing for the respondent and perused the materials placed before this Court.

6. The short issue that arises for consideration is whether the Tribunal was justified in dismissing the restoration application on the premise that COD clearance is required.

7. It is seen that the decision in the case of Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 it was held in paragraph 8 that by another order dated 20.7.2007 (Oil & Natural Gas Corpn. Maharashtra Ltd. case) this Court extended the concept of dispute resolution by High-Powered Committee to amicably resolve the disputes involving State Government and their instrumentalities. The appeal in this case was filed on 25.09.2004 and therefore, prima facie the appellant is justified in saying that there was no requirement for clearance by the High Powered Committee. The Tribunal was at error in dismissing the appeal at the first instance. Even otherwise, subsequent to the decision of the Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, (2011) 238 CTR 353 : (2011) 184 ECR 193 : (2011) 265 ELT 11 : (2011) 332 ITR 58 : (2011) 6 JT 372 : (2011) 2 SCALE 494 : (2011) 3 SCC 404 : (2011) 1 SCC(L&S) 514 : (2011) 2 SCR 971 : (2011) 21 STR 593 : (2011) 39 VST 1 : (2011) AIRSCW 3466 , the restoration application has been filed on 30.5.2011. The law as it stands on and after 17.2.2011 is that there is no requirement of getting clearance from the COD. The Tribunal had failed to note the decision of the Supreme Court and therefore, the order of the Tribunal is erroneous.

8. Learned counsel appearing for the respondent relied upon the decision in the case of Hindustan Copper Limited Vs. Union of India and Others, (2014) 2 AJR 760 : (2014) 307 ELT 662 : (2014) 28 GSTR 314 : (2014) 2 JLJR 466 , wherein it was held as follows:

"9. In the present case, challenging the order of the Commissioner (Appeals), the petitioner filed appeal before the CESTAT on 14-10-2009 [In ECIL case, the judgment was passed on 17-2-2011]. When the appeal was filed before the CESTAT, the directions in ONGC-II Oil and Natural Gas Commission Vs. Collector of Central Excise, (1994) 70 ELT 45 : (2011) 2 SCALE 498 : (2004) 6 SCC 437 and ONGC-III Oil and Natural Gas Commission Vs. Collector of Central Excise, (1994) 70 ELT 45 : (2011) 2 SCALE 498 : (2004) 6 SCC 437 were holding that field. In Oil and Natural Gas Commission and Another vs. Collector, 1992 (61) ELT 3 (SC), Hon''ble Supreme Court held as under:-

"4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

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11. In the present case, the petitioner, HCL, filed appeal in 2009. As per the ONGC-III Oil and Natural Gas Commission Vs. Collector of Central Excise, (1994) 70 ELT 45 : (2011) 2 SCALE 498 : (2004) 6 SCC 437 , the petitioner should have approached COD for obtaining clearance within one month after such filing (i.e. on 14-10-2009). But even though the appeal was pending from 2009 to 2012, the petitioner has not approached COD for obtaining clearance. As on the date of the judgment of ECIL, i.e. 17-2-2011, the petitioner has neither obtained COD clearance, nor produced evidence showing that it had approached COD for obtaining clearance. It is a matter of record that the petitioner had applied for COD clearance only on 4-9-2012 just ten days prior to taking up of its appeal. Having not been vigilant in either applying or obtaining COD clearance, the petitioner cannot take advantage of ECIL judgment."

9. We find that the above-said decision relied on by the learned counsel appearing for the respondent does not apply to the facts of the present case. As we have already held, when the restoration application was filed on 30.5.2011 by the appellant, the decision of the Supreme Court in the case of Oil and Natural Gas Commission and Another vs. Collector, 1992 (61) ELT 3 (SC) does not apply to the State Government and its instrumentalities.

10. In the light of the above, we answer the question of law in favour of the assessee and against the Revenue. Accordingly, the order of the Tribunal stands set aside and this Civil Miscellaneous Appeal stands allowed. No costs.

