

(2016) 04 GUJ CK 0114
In the Gujarat High Court

Case No : Special Civil Application No. 12438 of 2015 with S.C.A. No. 16047 of 2015

Kyori Oremin Ltd.

APPELLANT

Vs

Chief Commissioner of Customs

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Citation : (2016) 337 ELT 228

Hon'ble Judges : Akil Kureshi and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri Asit B. Joshi, Advocate, for the Petitioner; Shri R.J. Oza, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.(Oral)—These petitions arise in common background. We may notice facts as stated in Special Civil Application No. 12438 of 2015. The petitioner has challenged an order-in-original dated 30-4-2015 passed by the adjudicating authority, by which, the Principal Commissioner of Customs, classified the goods imported by the petitioner as bituminous Coal under differt heading/sub-heading 2701-1200 of the schedule to the Customs Tariff Act, 1975. He consequently ordered confiscation of the goods but refused to impose redemption fine in lieu of confiscation since the goods were not available for confiscation. He levied differential customs duty of Rs. 2.17 crores (rounded off) with interest. He imposed fine of Rs. 22 lacs on the petitioner under Section 112(A) of the Customs Act, 1962.

2. This order, the petitioner has challenged in this petition almost exclusively on the ground that the Commissioner ought to have stayed the adjudication proceedings since the issue was pending before various Tribunals at different stages. The petitioner, during the course of hearing of the show cause notice by the Commissioner, had filed written submissions dated 10-4-2015, in which, it was contended as under :

"8. It is submitted that since this issue as to whether ADB values should be adopted or not, has been referred by Hon"ble CESTAT Chennai to a Larger Bench vide its Misc. Order No. 42230-42339/2014, dated 18-12-2014 (in a bunch of Appeals), your honour may also like to keep the adjudication proceedings in abeyance till the Larger Bench decides the issue. A copy of the said order dated 18-12-2014 of CESTAT Chennai is produced herewith for reference please."

3. Counsel for the petitioner submitted that since identical issues were pending before the various Tribunals across the country, the Commissioner should have differed decision on the show cause notice in order to avoid multiplicity of proceedings. Though such a request was made before the Commissioner, he proceeded to pass the order of adjudication without even advertting to the request of the petitioner. Counsel submitted that the Department's own internal instructions provide for keeping the hearing of the appeals in abeyance when the issue is lying before the Tribunals. Counsel drew our attention to the judgement of this Court in case of Commissioner of Income Tax, Gujarat-II v. Surendra Gulabchand Modi reported in 140 ITR 517, in which, when a particular issue was pending before the Supreme Court which had bearing on the outcome of the pending proceedings before the Income Tax Tribunal, the Court was of the opinion that the Tribunal should have waited for the outcome of the proceedings before the Supreme Court. Counsel submitted that these issues have been referred to the Larger Bench by the Madras Tribunal as also by the Ahmedabad Tribunal.

4. On the other hand, learned counsel Mr. Oza for the Department opposed the petition contending that in absence of any stay against further proceedings, the Commissioner was within his right to complete the adjudication. The petitioner has right of appeal before the Tribunal. The petitions may, therefore, be dismissed.

5. Having heard learned counsel for the parties and having perused the documents on record, we notice that against the impugned order passed by the Commissioner statutory appeal lies before the Tribunal. In view of the availability of such alternative statutory remedy, particularly, in the field of the taxation, the Court would always be slow in entertaining the writ petition. These issues were discussed by the Supreme Court in case of Commissioner of Income Tax and ors. v. Chhabil Dass Agarwal reported in (2014) 1 SCC 603. Additionally, we must remember that the question in the petition concerns classification of the goods and therefore, even once the Tribunal decides the appeal, be it of the assessee or the department, further appeal would lie to the Supreme Court and not to the High Court. This would be an additional ground why the Court would not entertain the writ petition against the order of the adjudicating authority. These issues have been discussed by the Supreme Court in case of Union of India and anr. v. Guwahati Carbon Limited reported in (2012) 11 SCC 651 : 2012 (278) E.L.T. 26 (S.C.).

6. The contention, that in view of pendency of the proceedings before various

Tribunals, the Commissioner ought not to have proceeded with the finalisation of the show cause notice proceedings, is not one of universal validity. Under what circumstances, a certain proceeding should be kept in abeyance awaiting finalisation of a similar issue, must depend on facts and circumstances of each case. As in the case of Judgment of High Court in case of Commissioner of Income Tax, Gujarat-II v. Surendra Gulabchand Modi, the question of partition of the assessee himself was pending before the Supreme Court. In the opinion of the High Court the decision on the validity of the partition would have a direct bearing on the tax appeal which was pending before the Income Tax Tribunal. It was, in this background, the Court opined that the Tribunal should have awaited the outcome of the decision by the Supreme Court.

7. Accepting the petitioner's contention, that all proceedings of like nature must be kept pending till the issues are clarified finally, would lead to absurd consequences. As noted, the issues are referred to the Larger Benches of the Tribunal. In fact, in one such case, where the Madras Tribunal made a reference, the aggrieved party has approached the High Court of Madras, in which, the reference order is stayed pending further hearing of the petition as can be seen from the order supplied by the counsel for the petitioner in case of Commissioner of Customs v. Chettinad Cement Corp. Ltd. reported in 2015 (322) E.L.T. 195 (Mad.), even after the Larger Bench were to dispose of the references, there is always possibility of further legal proceedings being taken out by the aggrieved party. Therefore, to suggest that till similar issues achieve finality, any further adjudication can not take place would not be quite correct. Further, every question of classification in addition to involving question of law, would also depend on facts of each case. What is the material brought on record and the evidence in support of one classification or the other, need not necessary be common in all cases.

8. We therefore relegate the petitioners to the appellate remedy. However, in view of the fact that the petitioners have been pursuing their case before the High Court, if they file the appeals before the Tribunal latest by 15-5-2016, the same would be accepted without raising objection on limitation. At this stage, counsel for the petitioners submitted that the petitioners would be filing applications before the Tribunal for stay, which we are sure, the Tribunal will decide in accordance with law.

9. Under the circumstances, petitions are dismissed.