(2007) 07 BOM CK 0116

In the Bombay High Court

Case No : Central Excise Appeal No. 130 of 2007

Mahindra Ugine Steel Co. Ltd.	APPELLANT
Vs	
Commissioner of C. Ex.	RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Citation : (2009) 13 STR 214

Hon'ble Judges : R.V. More, J;F.I. Rebello, J

Bench : Division Bench

Advocate : V. Sreedharan and Prakash Shah, instructed by PDS Legal, for the Appellant; R.V. Desai and K.R. Chaudhari, for the Respondent

Judgement

1. On behalf of the respondents the learned counsel has raised an objection that an appeal would not lie before this Court as the appeal pertains to valuation.

2. The appellant before this court has formulated the questions of law in para 23. From the questions formulated in the appeal memo, it is clear that the appeal proceeds on the footing that even if the sale price of the scrap is to be added to the value of the components, there is still an excess payment. The appellants pointed out that in this very case the Supreme Court passed an order 2006 (203) E.L.T. 184 (S.C.) directing appointment of Cost Accountant from the panel of the department of Revenue and he would look into accounts of the appellant. Considering the grounds urged before the tribunal and before this court we are of the opinion that the substantial questions of law raised in the appeal do not pertain to valuation.

3. The learned Counsel for the respondent relied on the Judgment of the Supreme Court in the case of Navin Chemicals Mfg. and Trading Co. Ltd. Vs. Collector of Customs, . A perusal of the Judgment will indicate that the court was answering the issue determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment and that was considered in the context of the phrase for purposes of assessment.

Considering the contention raised before the Tribunal and the questions raised before the court, we are of the opinion that the issue of valuation does not arise and hence this appeal before the Court is maintainable and this first objection before this court is rejected.

4. In the appeal preferred against the order of the Commissioner of Central Excise, the substantial questions of law are set out in para 23. We do not propose to answer the question in view of the order to be passed

5. One of the submissions as urged on behalf of appellant herein is that they had raised the contention that there was excess payment. A ground was taken in the appeal memo and apart from that material was placed in support of the contention. The learned tribunal while deciding the appeal did not formulate the said question but formulated only two other questions. In our opinion, considering the contention as advanced and urged by the petitioner earlier before the Commissioner and also in the grounds of appeal before the Tribunal, the Tribunal was bound to frame and answer the issue.

6. On behalf of the respondent the learned counsel points out that considering the order of remand the only issue left for consideration was the report of valuation done by the cost accountant, and consequently there was no question of answering the issue as is now being raised.

7. We have perused the order of Hon''ble Supreme Court. In our opinion the order of Hon''ble Supreme Court was not limited to any specific term of remand. Tine Hon''ble Supreme Court remanded the matter back to the tribunal to consider the report of the cost accountant and then to dispose off by the appeal in terms of the grounds raised in the appeal. On this count alone the appeal is liable to be allowed.

8. It is also pointed out the tribunal has decided the issue of limitation against the appellant herein. The learned counsel has raised various contentions on that count. Without answering the issue we direct the Tribunal decide the issue afresh after hearing the parties.

9. In the light of that the impugned order dated 23-1-2007 is set aside. The matter is remanded to the Tribunal for hearing afresh and deciding the matter according to law.

10. All contentions of the parties are left open.

There will be no order as to costs.

