

(2009) 03 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Customs Appeal No. 11 of 2009

Shree Krishna Traders

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Constitution of India, 1950 — Article 141
Customs Act, 1962 — Section 130

Citation : (2010) 257 ELT 394

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This appeal u/s 130 of the Customs Act, 1962 (for brevity, "the Act") prays for quashing final order dated 18-7-2008 (A-12) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, "the Tribunal") [2009 (236) E.L.T. 725 (Tri.-Del.)]. The Tribunal has found that hazardous waste material which is being imported into India is not permissible. There is categorical finding that on the request made by the appellant, samples were re-tested and it was found that the goods in question i.e. furnace oil fall under the category of hazardous waste, which resulted into confiscation of the goods by the adjudicating authority and penalty was also imposed. The Tribunal dismissed the appeal by observing as under:

5. We find, that the Commissioner (Appeals) in the impugned order specifically held that appellant had not contested the merit of the tests and only contention of appellant is that the parameters which were prescribed under circular issued in the year 1997 should be applied. We find that various circulars was issued subsequently prescribing the parameters in respect of imported goods. Further, we find Hon''ble Supreme Court has taken notice of the fact that hazardous waste/material are being imported into India. Thereafter the board issued a circular as per the directions given by the Hon''ble Supreme Court. As per the

test reports the goods of hazardous waste and the import of the same is prohibited. In these circumstances, we find no merit in the contention of appellant for re-tested of the samples. The appeal is dismissed.

2. Mr. Jagmohan Bansal, learned Counsel for the appellant has raised only one issue, namely, that the goods were imported in the year 1999 and the circulars issued in the year 2001 or 2002 based on the judgment of Hon''ble the Supreme Court laying fresh norms for testing of the material would not apply to the transaction of import made earlier.

3. We are afraid that the argument lacks substance because there cannot be any support for the view that if the material imported into this country is hazardous waste then the same deserves to be imported irrespective of its effect. Moreover, the judgment of Hon''ble the Supreme Court in the case of Research Foundation for Science Technology and Natural Resources Policy Vs. Union of India (UOI) and Another, , was delivered on 5-5-1997, which is binding on every Court and authority. The law declared by Hon''ble the Supreme Court through its judgments have to be followed and binding under Article 141 of the Constitution. After noticing the statement made by the learned Additional Solicitor General that quantity of hazardous waste generated in the country each day is about two thousand tons, their Lordships'' proceed to issue direction to ensure performance of duty by the State Governments and other public authorities like the Pollution Control Boards. In para 3 of the judgment, the following directions were issued on 5-5-1997:

3. In these circumstances, we direct as under:

(1) Notice to all the State Governments and the State Pollution Control Boards to file their reply within four weeks of the receipt of the notice of the action taken by them in this behalf, particularly with reference to the identification/notification and availability of safe disposal sites; the steps taken to ensure safe disposal of hazardous waste in their State, particularly while granting any authorization/permission. They must also indicate the action plan, if any, made by them for tackling the problem relating to hazardous waste.

(2) With effect from today no authorization/permission would be given by any authority for the import which has already been banned by the Central Government or by any order made by any court or any other authority.

(3) With effect from today no import would be made or permitted by any authority or any person of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the date specified therein.

4. Once the aforesaid directions have been issued in 1997, it would be an ill advised argument that the parameters laid down in Circulars issued in 1997 or 1999 before import made by the appellant would apply and the view expressed by Hon''ble the Supreme Court was not to apply. The hazardous waste has been

banned from 5-5-1997 and no import of such a material is permitted. Accordingly, we are of the considered view that the appeal lacks merit and does not warrant admission because no question of law much less substantive question of law would arise for determination of this Court. Accordingly, the appeal fails and the same is dismissed.