

(2003) 04 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal 2294 of 2001 and Civil Appeal 2748 of 2001

Simplex Castings Ltd.

APPELLANT

Vs

Commr. of Cus., Vishakhapatnam

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37B
Customs Act, 1962 — Section 15(1)(C)

Citation : (2003) 155 ELT 5 : (2004) 2 SCALE 534 : (2003) 5 SCC 528

Hon'ble Judges : M. B. Shah, J;Arun Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the parties.

2. Being aggrieved and dissatisfied by the judgments and orders dated 9th May, 2000 and 10th August, 2000 in Appeal No. C/1663/92-B passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, the assessee has preferred these appeals. Learned Counsel for the appellant, apart from other contentions, submitted that in view of the circular dated 12-7-89 issued by the Central Board of Excise & Customs it would not lie in the mouth of the respondent that there would be deemed removal from the warehouse on the date when the period of warehousing was over. It is his contention that in view of the aforesaid circular and the decision rendered by this Court in Paper Products Ltd. v. Commissioner of The Paper Products Ltd. Vs. Commissioner of Central Excise, the judgments and orders passed by the Tribunal require to be set aside.

3. Admittedly in the present appeals, goods were sent to the bonded warehouse on 3-9-1991 for a period of three months, so the period of bonded warehouse was to expire on 2-12-1991. It is the contention of the assessee that it sought extension of period by filing application on 18th November, 1991. That application was deemed to have been rejected on the ground that on 21/26-11-1991 the assessee was asked to remove the goods on 18th December,

1991. Again, the assessee asked for extension of period for warehousing. On 23rd December, 1991, however, the Department asked assessee to clear the goods. The appellant did not remove the goods. Thereafter on 16th January, 1992 the Government issued a notification reducing rate of duty. On 21st January, 1992 the appellant filed the bill of entry. Thereafter on 1st March, 1992, another notification was issued exempting auxiliary duty. It is admitted fact that in April, 1992 final assessment order was passed by the Assistant Collector, Customs Department not granting benefit of the notifications. Against that order appeal preferred by the assessee before the Collector of Customs (Appeals), was allowed and benefit of exemption notifications was granted on the basis of the Board's circular dated 12-7-1989.

4. Against that judgment and order passed by the Collector of Customs, the Department preferred the aforesaid appeal before the Tribunal. That appeal was allowed by the Tribunal relying upon the decision rendered by this Court in *Kesoram Rayon (A Unit of Kesoram Industries Ltd.) Vs. Collector of Customs, Calcutta*, . In our view, the question involved in these appeals is squarely covered by the decision rendered by this court in *Paper Products Case* (supra) wherein this Court has considered what is the true nature and effect of the circulars issued by the Board in exercise of its power u/s 37B of the Central Excise Act, 1944 and has held as under :-

"This question is no more *res Integra* in view of the various judgments of this Court. This Court in a catena of decisions has held that the Circulars issued u/s 37B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the Department is concerned, such right is not available. [See *Collector of Central Excise, Patna Vs. Usha Martin Industries, etc.*, . In the case of *M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise*, this Court held that the whole objective of such Circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The Court also held that it does not lie in the mouth of the Revenue to repudiate a Circular issued by the Board on the basis that it is inconsistent with a statutory provision, (emphasis supplied). Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings. In the case of *Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd.*, , this Court has held that it is not open to the Revenue to advance an argument or even file an appeal against the correctness of the binding nature of the Circulars issued by the Board. Similar is the view taken by this Court in the case of *Collector of Central Excise, Bombay Vs. Kores (India) Limited, Thane*, .

5. In view of the aforesaid clear pronunciation by this Court, in our view it was not open to the Department to prefer the appeal before the Tribunal contrary to

what has been laid down in the circular dated 12-7-1989 which specifically provided that in such cases residual Section 15(1)(C) of the Customs Act would apply to the case where the goods are removed from a warehouse after expiry of the warehousing period and that the rate of duty in such cases shall be the rate prevalent on the date of payment of duty. No doubt the aforesaid circular is withdrawn by Circular dated 14th August, 1997. Still, however, at the relevant time neither the impugned order passed by the Collector of Customs (Appeals) can be said to be in any way illegal or erroneous nor it was open to the Department to challenge the said order.

6. As a result, the appeals are allowed and impugned judgments and orders passed by the Tribunal are set aside. In view of the peculiar facts and circumstances, the judgment and order passed by the Collector of Customs (Appeals) is restored.