(2013) 01 CAL CK 0040

In the Calcutta High Court

Case No : Writ Petition No. 1009 of 2012

Steel Authority of India Ltd. APPELLANT

Vs

CESTAT RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 199 ECR 204 : (2013) 293 ELT 510 : (2013) 23 GSTR 198

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Samir Chakraborty and S/Shri Abhijit Biswas and K.K. Maithy, for the Appellant;

Judgement

Indira Banerjee, J.—In this writ application Steel Authority of India Ltd., a Government Company within the meaning of the Companies Act, 1956, wholly owned by the Govt. of India, has challenged an Order No. S-1124/KOL/2012 dated September 19, 2012 passed by the Customs, Excise & Service Tax Appellate Tribunal, hereinafter referred to as the "CESTAT", dismissing the appeal of SAIL being Excise Appeal No. E/A/703/2010 as also the application of SAIL for dispensation of pre-deposit being Stay Petition No. E/S/884/2010. Being aggrieved by an order of adjudication dated August 10, 2010 whereby the adjudicating authority confirmed excise duty demand of Rs. 78,97,686/- along with interest and penalty of Rs. 4,84,83,657/-, SAIL preferred the said Appeal No. E/A/703/2010 before the "CESTAT". SAIL also filed the application being E/S/884/2010 praying for dispensation of the requirement of pre-deposit of the disputed duty and penalty.

2. The said application, taken up for hearing on September 19, 2012, was dismissed along with the appeal, on the purported ground that SAIL had not produced the requisite COD (Committee of Disputes) clearance.

3. By an order dated September 11, 1991 which is reported in 1992 (61) ELT 3 (SC) E.L.T. 3 (S.C.), the Supreme Court observed that Public Sector

Undertakings of Central Government and the Union of India should not fight their litigations in Court. Thereafter an order dated 11-10-1991 followed, directing the Government of India to set up a Committee to monitor such disputes. Pursuant to the aforesaid order a Committee was constituted. The Committee was initially called High-Powered Committee (HPC). The Committee was later called Committee of Secretaries (COS).

4. In the ONGC-III case which is reported in Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others, the Hon''ble Supreme Court directed that in the absence of clearance from CoS any legal proceedings should not be proceeded with. A further order dated 20th July, 2007 was passed in the fourth ONGC case, extending the concept of dispute resolution by High-Powered Committee to amicable resolution of disputes involving the State Governments and their Instrumentalities. The question of requirement of clearance from CoD was referred to a five Judge Constitution Bench. By a judgment and order dated 17th February, 2011 Electronics Corporation of India Ltd. Vs. Union of India (UOI) and Others, the Constitution Bench recalled the earlier orders of the Supreme Court observing as follows:

9. The idea behind setting up of this Committee, initially, called a High-Powered Committee (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee, [see para 3 of the order dated 7-1-1994 (supra) Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led a PSU to Institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and Insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as (i) Oil and Natural Gas Commission and Another Vs. Collector of Central

Excise, (ii) Oil and Natural Gas Commission Vs. Collector of Central Excise, and (iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others,

10. In the circumstances, we hereby recall the following Orders reported in:

(i) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, 1992 (61) ELT 3 (SC)

(ii) Oil and Natural Gas Commission Vs. Collector of Central Excise, Oil and Natural Gas Commission Vs. Collector of Central Excise,

(iii) Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others,

(iv) For the aforestated reasons, I.A. No. 4 filed by the assessee in Civil Appeal No. 1903/2008 is dismissed.

5. The orders of the Hon''ble Supreme Court which required CoD clearance having been recalled, the learned Tribunal patently erred in dismissing the said application and the appeal on the purported ground that SAIL had not produced evidence of having applied for clearance from the CoD or on the ground that SAIL had not produced any clearance from the CoD.

6. As held by the Supreme Court in the case of M.A. Murthy Vs. State of Karnataka and Others, a decision of the Supreme Court enunciating a principle of law is applicable to all cases, irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from the inception unless, of course, the Supreme Court expressly indicates that the decision would have prospective effect. May be, as contended by Mr. Maity, the appeal was filed before 17th February, 2011 when the Constitution Bench judgment of the Supreme Court recalling the earlier orders was pronounced. The orders whereby clearance was required having been recalled, the appeal and the stay application could not have been dismissed on the ground of want of clearance or want of an application for clearance.

7. The impugned order is, thus, set aside. The writ petition is disposed of accordingly.

8. Affidavits not having been called for, the allegations made in the writ petition shall be deemed not to have been admitted.

9. The learned Tribunal shall dispose of the stay application in accordance with law within two months from the date of communication of this order after giving the petitioner and the Department a reasonable opportunity of hearing. Urgent certified copy of this order be supplied to the parties, if applied for, upon compliance all requisite formalities.