

(2014) 08 SC CK 0092

In the Supreme Court Of India

Case No : Civil Appeal No. 2988 of 2006

Tata Chemicals Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2014) 309 ELT 385 : (2014) 47 GST 767

Hon'ble Judges : V. Gopala Gowda, J;Dipak Misra, J

Bench : Division Bench

Advocate : Ravinder Narain, Rajan Narain, Ajay Aggarwal, Mallika Joshi, Shravani Shekhar, Ruchika, B.L. Narasimhan, Alok Yadav, M.P. Devanath and B. Krishna Prasad, Advocates for the Appellant; Mukul Rohtagi, A.G., Rajiv Dutta, Sr. Adv., B. Krishna Prasad, Rupesh Kumar, Arijit Prasad, A.T.M. Sampath, Krishna Kumar R.S. and Rajesh Kumar, Advocates for the Respondent

Judgement

1. The present appeal, by special leave, is preferred against the order dated 14.02.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in appeal No. E/480/04 whereby the Tribunal has disposed of the appeal by expressing the opinion in the following manner:- "8. The dispute regarding the assessable value of the soda ash for the period 1981 to 1985 came before the Tribunal and the Tribunal rejected the claim. The decision is reported as Tata Chemicals v. CCE, 2000 (121) ELT 36.

9. We have gone through the order passed by the Tribunal. In para 5, the Tribunal specifically noted the contention of the Appellant where the reliance was placed on the letter dated 15.12.1970, 1.2.1971 and 2.4.1971 and other evidence produced by the Appellant and after going through the evidence, the Tribunal rejected the claim and held that value of gunny bags used for packing of soda ash manufactured by the Appellant are includible in the assessable value of soda ash. The same evidence is now relied upon by the Appellant before us to show that there was arrangement for return of the packing material."

The aforesaid paragraphs clearly demonstrate that the Tribunal has followed the

reasoning that it had followed for the period 1981 to 1985. Mr. B.L. Narasimhan, learned Counsel for the Appellant would contend that the claim of the Assessee before the authorities was absolutely different inasmuch as two contentions were raised before the authorities, namely, that excise duty was not leviable on the packing materials supplied by the buyer, and the second, the same was durable and returnable, but, the Tribunal has adverted to the second aspect by expressing its view on the basis of the decision rendered by it pertaining to the assessment years 1981 to 1985 and not adverted to the issue that no levy could have been imposed on the packing material, if it is supplied by the purchaser and the said fact proven to the satisfaction of the authorities that it has been used for packing. 2. Learned Counsel for the Appellant fairly submitted that he does not intend to press the issue with regard to durability and returnability. He has confined his submission with regard to levy of excise duty on the packing material supplied by the buyer.

3. Mr. Rohtagi, learned Attorney General, we must appreciably state, submitted with all fairness at his command that as far as the first aspect is concerned, if the packing materials are supplied by the buyer, the levy could not have been imposed. The said contention is absolutely correct in view of the law laid down in M/s. Hindustan Polymers Vs. Collector of Central Excise, . As the Tribunal has not adverted to the said facet, we allow this appeal and remand the matter to the Tribunal exclusively for delineation on the said issue. Accordingly, the order of the Tribunal is set aside to the said limited extent. We may hasten to clarify, our setting aside of the order would not have no effect whatsoever for the assessment years 1981 to 1985. There shall be no order as to costs.