
(2016) 04 SC CK 0124

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5816-5819 of 2005 with C.A. Nos. 9282 of 2013, 5377-5378 of 2014

Union of India

APPELLANT

Vs

Engge Industrial Services Co. Ltd.

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : (2016) 335 ELT 197

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri Kailash Vasudev and Arshad Hidayatula, Senior Advocates, Bimal Roy J, Ms. Nisha Bagchi, Ms. Pooja Sharma, B. Krishna Prasad, Ajay Sharma, Rajeev Sharma, Ms. Neelam Sharma, Rohit Alex, Ramavatar Sharma, Gaurav Jain and S.P.M. Tripathi, Advocates, M/s. Parekh and Co, for the Appearing Parties

Final Decision : Disposed Of

Judgement

Civil Appeal Nos. 5816-5819 of 2005 : The respondent No. 1 herein had imported a ship in which Bill of Entry was filed. This Bill of Entry specifically declared that the import of ship was for breaking and for no other use. The customs authorities charged additional duty thereupon which was challenged by the respondents. Though learned Single Judge of the High Court dismissed the writ petition, in the intra-court appeal filed by the respondents, the Division Bench decided the issue in favour of the respondents herein. The basis of the judgment of the High Court is that when excise duty is exempted, there is no question of payment of additional duty. For this purpose, the High Court has referred to the Constitution Bench judgment of this Court in "Hyderabad Industries Limited v. Union of India" [1999 (5) SCC 15 = 1999 (108) E.L.T. 321 (S.C.)].

2. In these appeals, the appellants have not controverted the aforesaid plea, viz., no Excise duty is payable and the product manufactured in India is exempted

from Excise duty.

3. In view thereof, the aforesaid judgment of this Court stands attracted to the facts of this case and we do not find any infirmity in the view taken by the High Court.

4. The appeals stand dismissed.

Civil Appeal Nos. 5377-5378 of 2014

5. The admitted facts are that the vessel in question known as M.V. Jagat Priya was manufactured in India by the Hindustan Shipyard Ltd., Vishakhapatnam and it was sold to one M/s. Dempo Steamships Ltd. under bond by charging 1% Central Excise duty. M/s. Dempo Steamships Ltd. had to pay money to various creditors and a suit was filed by those creditors in the High Court of Bombay which was decreed. In the execution proceedings, based on the said decree, the Bombay High Court, in its admiralty jurisdiction, passed an order for auction of the aforesaid vessel on "as is where is" basis. The appellant herein purchased the said vessel in auction, being the highest bidder, and took delivery. The respondent-Customs Department wants to impose import duty thereupon. By no stretch of imagination, it can be treated as import when the vessel was manufactured by an Indian company and was sold to another Indian company which was using this vessel. We, thus, are of the opinion that the Central Excise and Service Tax Appellate Tribunal (in short "the CESTAT") has gone totally at a tangent and has held that the appellant shall be liable to pay duty on totally irrelevant consideration.

6. We, therefore, allow these appeals and set aside the impugned order of the CESTAT. The Customs duty paid by the appellant shall be refunded within two weeks.

Civil Appeal No. 9282 of 2013

7. In view of the aforesaid orders passed in Civil Appeal Nos. 5377-5378 of 2014, this appeal stands disposed of.

8. First appeal dismissed/Second appeal allowed.