IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 13 OF 2023

Sterlite Opticals Technologies Ltd. .. Appellant

Versus

Commissioner of Customs and Central Excise .. Respondent

WITH
CENTRAL EXCISE APPEAL NO. 56 OF 2008

Commissioner of Customs and Central Excise .. Appellant

Versus

Sterlite Opticals Technologies Ltd. .. Respondent

Mr. Rohan Shah, Senior Advocate *a/w Gopal Mundhra, Parth Parikh, C. Jain, Rajath Bharadwaj i/b. Economic Laws Practice for the Appellant in CEXA/13/2023 and for the Respondent in CEXA/56/2008.*

Adv. Jitendra B. Mishra *a/w Dhanajay Deshmukh for the Respondent in CEXA/13/2023 and for the Appellant in CEXA/56/2008.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: JANUARY 08, 2025

P. C.

1. Central Excise Appeal No. 13 of 2023 is filed by the Assessee impugning the order of the CESTAT dated 17th June, 2005. Central Excise

Appeal No. 56 of 2008 is filed by the Department challenging the very same order.

2. This matter has quite a chequered history. Originally, the Assessee as well as the Department had filed their Appeals in this Court. In the Assessee's Appeal, an order was passed by this Court, wherein it sustained the preliminary objection raised by the Revenue Department and held that the subject Appeal is not tenable before this Court and they would have to approach the Hon'ble Supreme Court. Accordingly, the Assessee approached the Hon'ble Supreme Court. Since the Assessee's Appeal was pending before the Hon'ble Supreme Court, even the Revenue Appeal was transferred to the Hon'ble Supreme Court.

3. Thereafter both the aforesaid Appeals have been remanded back to this Court for the reasons more particularly stated by the Hon'ble Supreme Court in its order dated 30th November, 2022 passed in Civil Appeal No. 2869 of 2007. This is how these matters have come up before us.

4. In these circumstances, Central Excise Appeal No. 13 of 2023 [filed by the Assessee] is admitted on the following questions of law:

(a) Whether the Tribunal erred in law in holding that the status of the Appellants unit as an EPCG unit would be from the date of actual issuance of the license and not from the time when the first import took place on which Customs duty has been charged and recovered under the EPCG license?

(b) Whether the Tribunal erred in law in holding that the debonding would come into force only from such time as the actual order was made (i.e. 10th July 2003) notwithstanding the fact that the Department had delayed the making of the order of debonding without any legitimate reason, arbitrarily and malafide, which conduct has been strictured by this Hon'ble Court in its order dated 25th March, 2003?

(c) Whether in view of the fact that the Appellant's unit has now been assessed as an EPCG unit, the said status would attach from the date of import and/or to the date of application for debonding/migration to the EPCG Scheme and accordingly no differential duty could be demanded from the Appellant?

(d) Whether in view of the fact that there was an unreasonable delay caused by the Department to allow the debonding of the Appellant's unit and the consequent assessment to the EPCG Scheme, it ought to have been held that the debonding of the Appellant's unit would relate back to the date of the application for debonding?

(e) Whether the Tribunal was correct in upholding the confiscation and the imposition of the redemption fine?

5. As far as Central Excise Appeal No. 56 of 2008 is concerned [filed by the Department], the same is admitted on the following questions of law:

(a) Whether the Hon'ble CESTAT passed a legal and valid order of imposing fine on the one hand and holding on the other hand that no duty was payable? Can there be fine when there is no duty?

(b) Whether the Appellate Body like the CESTAT can grant such a substantial reduction in respect of redemption fine of Rs.

15 Crores in case of capital goods and Rs. 5 Crores in case of consumer goods without recording any reasons for such reduction?

(c) Whether Hon'ble CESTAT passed a legal and valid order in light of the provision of Section 112 of the Customs Act read with relevant Rules made under the Central Excise Rules whereby the individual penalties imposed by the impugned order had been totally quashed?

(d) Whether the order of CESTAT of reducing the: redemption fine from Rs. 30 Crores to 15 Crores in relation to capital goods is just and proper?

6. Since these Appeals are pending since quite long, the hearing is expedited and the Appeals are peremptorily fixed for hearing on 12th February, 2025.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Laxmi