

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5857 OF 2007

UNION OF INDIA & ORS.

... Appellants

VERSUS

M/S SARASWATI MARBLE &
GRANITE INDUSTRIES PVT. LTD.

... Respondent

WITH

CIVIL APPEAL NO. 8913 OF 2015
(Arising out of SLP(C) No. 5819 of 2007)

O R D E R

Leave granted in SLP (C) No. 5819 of 2007.

These two appeals are filed challenging the judgments of the High Court of Rajasthan whereby the excise duty and penalty which was paid by the respondents herein have been quashed.

The proceedings arise out of Show Cause Notices issued to the respondents on the ground that cutting of marble blocks into marble slabs and tiles amounted to the manufacturing activity but the respondents were not paying excise duty thereon. The Order-in-Original was passed confirming the demand made in the Show Cause Notices. This order was upheld by the Tribunal as well. The matter was not taken further by the respondents and thus, it attained finality. Not only that, on that basis, amount of excise duty and penalty was recovered from the respondents after

the proceedings were over some time in February, 2001.

It so happened that identical issue was taken up by some other assessee contending that the cutting of marble blocks into marble slabs and tiles did not amount to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944, and therefore, no excise duty was payable. That dispute landed up in this Court and was finally decided in the case of '*Rajasthan State Electricity Board v. Associated Stone Industries & Anr.* [JT 2000 (6) SC 522] holding that it did not amount to manufacture activity.

After this judgment was rendered, the assessees filed writ petitions seeking refund of the amount which they had paid and the High Court allowed those writ petitions directing the Union of India to refund the amount of duty, interest and penalty.

A neat submission which his made by Mr. A. K. Sanghi, learned senior counsel appearing for the Union of India, is that no such writ petition to claim refund of the excise duty, penalty and interest was maintainable when the proceedings in respect of respondents had attained finality and amount recovered. Merely because this Court in some other judgment, at a subsequent date, took a different view and settled the position in law, is not a valid ground available to the respondents to approach the High Court under Article 226 of the Constitution of India and claim such a relief.

The aforesaid submission is valid and justified in law.

Insofar as the respondents are concerned, the duty was paid by them after proper adjudication and a particular view was taken which was upheld by the Tribunal as well. As mentioned above, no further appeals were brought by the respondents and, therefore, such proceedings had attained finality. The order of refund of this amount, merely because this Court took different view thereafter in some other case, would not be permissible. Thus, insofar as the direction contained in the impugned judgments to refund the amount of duty, interest and penalty is concerned, the same is set aside. However, once this Court has settled the position of law holding that the aforesaid process would not amount to manufacture, from the date of the judgment of this Court, the Excise Department is not entitled to recover any such excise duty from the respondents.

With the aforesaid directions and in terms of the aforesaid orders, these appeals are allowed.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
October 16, 2015.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5857/2007

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

M/S SARASWATI MARBLE & GRAN.INDUS.P.LTD.

Respondent(s)

(With office report)

WITH

SLP(C) No. 5819/2007

(With Interim Relief and Office Report)

Date : 16/10/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. A. K. Sanghi, Sr. Adv.

Mr. Arijit Prasad, Adv.

Ms. Aruna Gupta, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. P. K. Manohar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in SLP (C)No. 5819 of 2007.

The appeals are allowed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]