

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.2420 of 2005

Commissioner of Customs (Import), Mumbai

Appellant(s)

VERSUS

M/s Hindalco Industries Ltd.

Respondent(s)

WITH

Civil Appeal No.3469 of 2015

O R D E R

Civil Appeal No.2420 of 2005

The respondent - assessee is engaged in the manufacture of copper and copper products in their smelter plant. For setting up of the said smelter plant, it had imported certain capital goods from a few foreign suppliers, which included M/s. Outokumpu Engineering Contractors, Finland (for short "OEC"). Three agreements of dated 12th November, 1994 were entered into between the respondent and the OEC. These are known as Licence Agreement, Delivery of Proprietary Equipments Agreement and Basic Engineering, Training and Technical Services Agreement. Under the Delivery of Proprietary Equipments Agreement, capital goods for setting up of the plant in the sum of US \$ 2,10,25,000/- were imported. The bill of entry showing the aforesaid invoice value was filed. The

Customs Authorities, however, wanted to load this price with the consideration that was agreed for Licence Agreement as well as Basic Engineering, Training and Technical Services Agreement. The Assistant Commissioner of Customs, after issuing show cause notice, held that the payments made in the other two agreements need not be added to the invoice under Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. However, the assessable value of the equipment imported for sulphuric acid plant should be loaded by 2.03% of the said Rules.

The Department felt aggrieved against this approach of the Assistant Commissioner of Customs and filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the said appeal holding that the licence fee and fees paid for basic engineering services should be added to the invoice price of the imported goods for the copper smelting plant in terms of Rule 9 of the aforesaid Rules.

Against this order of the Commissioner (Appeals), the assessee preferred appeal which has been allowed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) by the impugned judgment.

This is how the Department has preferred the present appeal against the order of the CESTAT.

On going through the order of the CESTAT, it becomes clear that the CESTAT has gone into the various provisions of the three agreements and has come to the conclusion that neither the fees paid under the Licence Agreement nor under the Basic Engineering, Training and Technical Services Agreement related to the import of the capital goods nor was it a condition of sale and on that basis it has recorded the finding that the provisions of Rule 9(1)(b)(iv) or Rule 9(1)(c) or Rule 9(1)(e) of the aforesaid Rules would apply to the facts of the case. That apart, it further finds that both the Agreements, viz., Licence Agreement as well as Basic Engineering, Training and Technical Services Agreement, pertained to the services that were to be provided post import of the aforesaid goods. On this ground also, the value of these services could not have been loaded into the value of the goods at which those were imported.

It is also to be borne in mind that the respondent had purchased various capital components from many other parties and the goods for which the agreement was signed with OEC constituted only 16% of the total value.

On these facts, we are of the opinion that the matter is squarely covered by the recent judgment of this Court in Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Ltd. [Civil Appeal No.3042 of 2004] decided on 13th April,

2015.

For all these reasons, we do not find any infirmity in the impugned order of the CESTAT.

Thus, this appeal, which is bereft of any merit, is accordingly dismissed.

Civil Appeal No.3469 of 2015

In this appeal, we find that almost on identical terms, as noted in the above Civil Appeal No.2420 of 2005, agreements were entered into by the assessee with one M/s. Davy Dravo. Apart from the agreement for supply of equipments, other agreements are Basic Engineering and Training Agreement, Process Licence Agreement and Supervisory Services Agreement. The consideration of these three agreements is laid into the valuation of supplies made by M/s. Davy Dravo. Not only the supplies which the assessee took from the said Company constituted merely 16 per cent of the total capital goods and the remaining capital goods were purchased from some other exporters as well as indigenous, we also find that all these agreements pertained to rendering of services which are post import. Therefore, this case is also squarely covered by the judgment of this Court in Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Ltd. [Civil Appeal No.3042 of 2004] decided on 13th April, 2015.

The Tribunal, however, in the instant case, took a different view, i.e., in favour of the Revenue and against the

assessee. For the reasons recorded in the judgment in M/s. Essar Steel Ltd. (supra) as well as the salient features noted while deciding the above appeal, being Civil Appeal No.2420 of 2005, this appeal warrants to be allowed, setting aside the orders of the CESTAT. It is directed accordingly.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI
MAY 11, 2015

ITEM NO.107

COURT NO.13

SECTION III

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(s). 2420/2005

COMMNR. OF CUSTOMS, MUMBAI

Appellant(s)

VERSUS

M/S. HINDALCO INDUSTRIES LTD.

Respondent(s)

(with appln. (s) for stay and office report)

WITH

C.A. No. 3469/2015

(With appln.(s) for stay and appln.(s) for c/delay in re-filing appeal and Office Report)

Date : 11/05/2015 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. Jaideep Gupta, Sr. Adv.
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Mr. Rachit Jain, Adv.
Ms. Hemant Bajaj, Adv.
Mr. Aman D., Adv.
Mrs. Disha Jain, Adv.
Mr. R. Ramachandran, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Ambarish Pandey, Adv.

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

Civil Appeal No.2420 of 2005 is dismissed and Civil
Appeal No.3469 of 2015 is allowed in terms of the signed
order.

(SANJAY KUMAR-I)
COURT MASTER

(NIDHI AHUJA)
COURT MASTER

(SUMAN JAIN)
COURT MASTER

(Signed order is placed on the file)