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C.A.No. 2728 OF 1998
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ITEM No.103 Court No. 10 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.2728 of 1998@@
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M/s VXL India Ltd. Appellant (s)

VERSUS

Commissioner of Cent. Excise, Rajkot Respondent (s)

(With office report)

Date : 03/05/2001 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Appellant (s) Mr. Joseph Vellapalli, Sr. Adv.
Mr. Dinesh Mathur, Adv.
Mr. Tarun Gulati, Adv.
for M/s. J.B. Dadachanji & Co.

For Respondent (s) Mr. Soli J. Sorabjee, AG
Mr. Rajiv Nanda, Adv.
Mr. B.K. Prasad, Adv.

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

.....L.....I.....J.....
.SP2
After hearing counsel for the parties the Civil Appeal is dismissed in terms of the signed order.

.SP1

(D.D. Jindal)
Asstt. Registrar

(Manju Sharma)
AR-cum-PS

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2728 OF 1998@@
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M/s VXL India Ltd. ..Appellant

Versus

Commissioner of Central Excise ..Respondent
Rajkot

O R D E R@@
CCCCCCCCC

.SP2
.....L.....I.....J....

This appeal is directed against the order of rejection of appeal by CEGAT, Mumbai. The facts depict that the appellant had placed the order of supply of 20,027 MT Metallurgical Coke of specified size with M/s Jenson & Nicholson Pvt. Ltd., Singapore at a stipulated price. According to the invoice from the supplier the price of the consignment was shown as US $2,143,524.85. The customs duty was assessed accordingly on the value shown in the invoice and goods were cleared by the appellant on payment of the same. Subsequently, however, on detailed inspection of the material at the plant site, the appellant said to have discovered that the size of the metallurgical coke was not as per the terms of the contract and as such brought them to the notice of the representatives of the foreign supplier with the test report by reason wherefore there was certain diminution in the price.

..2/-

The Tribunal went into the matter in great detail including the revised agreement between the parties on account of materials said to have been defective. The relevant portion of the revised agreement read as below:

.SP1
.....L.....J....

"Differences have arisen between the parties in relation to the quality and specifications of the said Coke supplied particularly about ash, moisture and size and whereas Saukem (i.e. the appellants herein) allege they have suffered losses, and whereas JNS (i.e. the suppliers) deny these allegations.

> As a result of discussions between the representatives of the parties hereto, it has been amicably agreed, without any admission of liability by either party that in consideration of both parties refraining from commencing or proceeding with any legal action again the order in consideration, of the mutual promises and convents contained herein and intending to be legally bound hereby the parties hereto have reached an amicable agreement to settle all disputes in accordance with the said contract and the said coke as follows...."

.....L.....I.....J....

.SP2

It is on the basis of the aforesaid that the Tribunal came to the conclusion that the revised agreement cannot but be termed to be an agreement arrived at by the parties to avoid litigation since there is no acceptance of liability of diminution in value.

..3/-

Incidentally be it noted that there was no dispute regarding the valuation at the time of original assessment. Neither the testing was done in the presence of the customs authorities though loading, unloading and weighment etc. were effected in their presence. Subsequently, however, the facts depict a refund claim has been filed on the basis of the revised invoice. The revised invoice obviously was the result of the revised agreement between the parties as noted above and it is on this factual count that the Tribunal did not see any merit with the appeal preferred before it. We also do not feel inclined to interfere with the reasoning and findings of the Tribunal, since we also do not see any merit in the appeal. The appeal is, therefore, dismissed. No order as to costs.

.SP1

.....J.
(U.C. BANERJEE)

.....J.
(Y.K. SABHARWAL)

New Delhi,
May 03, 2001