

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION**

Civil Appeal No 2869 of 2007

Sterlite Optical Technologies Ltd_

... Appellant(s)

Versus

Commissioner of Customs & Central Excise

....Respondent(s)

WITH

Transferred Case No 22 of 2011

ORDER

1 There are two proceedings before this Court :

(i) Civil Appeal No 2869 of 2007 instituted by the assessee, Sterlite Optical Technologies Ltd, against the judgment and order dated 17 June 2005 of the West Zonal Bench of the Customs, Excise and Service Tax Appellate Tribunal¹; and

(ii) Transferred Case No 22 of 2011 instituted by the Commissioner of Central Excise and Customs for transfer of Appeal No 4 of 2006 instituted by the Department before the High Court of Judicature at Bombay.

2 The CESTAT rendered a common judgment against a common order passed by the Commissioner while adjudicating upon two show cause notices, one
1 CESTAT

pertaining to the Central Excise Act and the second pertaining to the Customs Act. The Tribunal, by its impugned order, disposed of the appeals in the following terms :

“93. The appeals are disposed off in the following terms:

- 1) Central excise duty under proviso to Section 3(1) of the Central Excise Act is payable on 6,35,626.7 kms of optical fibres is upheld subject to granting credit of duty already paid (Rs. 10,54,54,680/-) on this quantity when it was cleared from E2.
- 2) Confiscation of 3,35,636 kms of optical fibres manufactured in E3 removed without payment of duty under Rule 25(1) (a), (b) and (d) is upheld. Redemption fine of Rs. 10 crores is reduced to Rs.5 crores (five crores) if they are cleared for home consumption. If however these goods are exported, fine is reduced to Rs. 50 lakhs (Fifty lakhs). Duty on the said goods is payable under proviso to Section 3(1) of the Central Excise Act on redemption if the goods are cleared for home consumption. No duty if they are exported out of India on payment of fine (Rs.50 lakhs).
- 3) Duty on pre-forms (9913 kgs) is held to be payable under proviso to Section 3(1) of the Central Excise Act as demanded.
- 4) Interest under Section 11AB as demanded is upheld.
- 5) Penalty under Section 11AC of the Central Excise Act is reduced to Rs.84,33,38,000/-.
- 6) Penalties under Rule 26 of the Central Excise Rules imposed on S/Shri Navin Agarwal, L. Ram Kumar, S.L Bajaj, Abhay Kelkar, Venkatesan Babu and Pramod Unde are set aside thus allowing their appeals.
- 7) Confiscation of capital goods as mentioned in Annexure 47 to the show cause notice under Section 111(o) of the Customs Act for contravention of the provisions of notification 53/97 Cus. upheld. Redemption line is reduced to Rs. 15 crores (fifteen crores).
- 8) Duty demanded on the raw material is set aside and the matter remanded to the adjudicating authority to redetermine the same after considering the submissions

made by the appellants. Opportunity of being heard should be accorded along with an opportunity to furnish evidence if any in this regard.

- 9) Penalty of Rs. One crore imposed on the appellant company under Section 112(a) is set aside. The Commissioner will redetermine the quantum of penalty after ascertaining the extent to which raw materials imported under notification 53/97-Cus. Are not accounted for. We may however make it clear that since the capital goods are held to be liable to confiscation under Section 111(o), penalty is imposable.
- 10) Penalties imposed on the various employees under Section 112(b) at sl.no.6 above are set aside and appeals allowed.”

3 The appeal by the assessee pertained both to the adjudication which took place in pursuance of the show cause notice under the Central Excise Act as well as the order of confiscation and redemption fine imposed under the Customs Act. The appeal by the Department before the High Court of Judicature at Bombay pertained to the reduction of the redemption fine from Rs 30 crores to Rs 15 crores by the CESTAT and the setting aside of penalties imposed on various employees.

4 Insofar as the appeal pertaining to the component under the Excise Act is concerned, an application was filed before this Court by the assessee for the settlement of the dispute under the Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme 2019. When the application by the assessee came up before the adjudicating authority on 9 September 2020, the following order was passed :

“This is an application filed by the appellant in the Civil Appeal seeking to withdraw the above appeal qua the duties of excise imposed under the order impugned in the appeal.

The order which is the subject matter of the appeal has two components, one arising out of the Central Excise Act and the other arising out of the Customs Act. According to the appellant, they went under the Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme, 2019 issued under the Finance Act, 2019 for the settlement of the disputes qua the excise component alone. Therefore, the appellant seeks to withdraw only that part of the dispute in the above appeal which relates to the excise component, but retaining the appeal insofar as the customs component is concerned.

However, the Ld. Standing counsel for the Union of India opposed the request, on the short ground that the customs component forming part of the order impugned in the appeal comprises only of redemption fine and penalties and that once the above appeal is withdrawn with respect to excise component, the appeal will not even be maintainable in respect of the other portion.

But the aforesaid objection can be taken by the Union of India when the appeal relating to the custom component comes up for hearing. The respondent cannot object to the appellant withdrawing any portion of the appeal, provided the appellant is not seeking any benefit from Court on account of the withdrawal.

In view of the above, I.A.No.35035/2020 is allowed and the appeal shall be treated as withdrawn only in respect of the dispute arising out of the excise component. The liberty is reserved to the respondent to raise the question of maintainability of the appeal in relation to the surviving dispute.”

- 5 As a consequence of the above order, the appeal pertaining to the excise component has been permitted to be withdrawn in terms of the request which was made by the assessee. What survives then is the appeal of the assessee pertaining to the component of the Customs Act 1962 and the Transferred Case arising from the appeal filed by the Department before the High Court of Judicature at Bombay.
- 6 In terms of Section 130E(b) of the Customs Act, an appeal lies against any order

of the CESTAT relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment. The appeal by the assessee pertaining to the customs component does not fall within the ambit of Section 130E(b) of the Customs Act 1962. Hence, it would be appropriate to transfer the appeal filed by the assessee to the High Court of Judicature at Bombay.

7 Insofar as the Transferred Case is concerned, the Department had moved for transfer of the appeal which was instituted before the High Court to this Court in view of the pendency of the appeal filed by the assessee. Since the appeal by the assessee is being transferred to the High Court, the Transferred Case shall accordingly have to be remitted by restoring the appeal filed by the Department to the High Court of Judicature at Bombay for disposal.

8 We accordingly pass the following order :

- (i) Civil Appeal No 2869 of 2007 shall stand transferred to the High Court of Judicature at Bombay for disposal;
- (ii) The appeal arising out of the Transferred Case, namely, Tax Appeal No 4 of 2006 shall stand restored to the file of the High Court of Judicature at Bombay.

9 Having regard to the fact that the appeals pertain to the year 2007 and 2006 respectively, we would request the High Court to dispose of the appeals expeditiously and preferably within a period of six months of the date on which a certified copy of this order is produced on the record of the High Court.

- 10 The Registrar (Judicial) of the High Court of Judicature at Bombay shall take necessary steps after obtaining the administrative instructions of the learned Chief Justice of the High Court.
- 11 The appeal and the transferred case are accordingly disposed of.
- 12 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
November 30, 2022
- GKA -

ITEM NO.109

COURT NO.1

SECTION IX

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). 2869/2007

STERLITE OPTICALS TECHNOLOGIES LTD.

Appellant(s)

VERSUS

COMMISSIONER OF CUSTOMS & CENTRAL EXCISE

Respondent(s)

(IA No. 71123/2020 - EARLY HEARING APPLICATION IA No. 71128/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 67742/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 67739/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 5/2012 - VACATING STAY IA No.3/2007 - VACATING STAY)

WITH

T.C.(C) No. 22/2011 (XVI-A)

Date : 30-11-2022 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s) Mr. B. Krishna Prasad, AOR

Mr. S.K. Bagaria, Sr. Adv.
Mr. Rohit Jain, Adv.
Mr. Kumar Visalaksh, Adv.
Mr. Udit Jain, Adv.
Mr. Archit Gupta, Adv.
Mr. K. Ajit Singh, Adv.
Mr. Abhay Chattopadhyay, Adv.
Mr. Praveen Kumar, AOR

For Respondent(s) Mr. Praveen Kumar, AOR

Mr. Balbir Singh, ASG
Mr. Arijit Prasad, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Ms. Nisha Bagchi, Adv.
Ms. Monica Benjamin, Adv.

Ms. Deepabali, Adv.
Mr. T.S. Sabarish, Adv.

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

1 The Appeal and the Transferred Case are disposed of in terms of the signed order operative part of which reads as under:

“8 We accordingly pass the following order :

- (i) Civil Appeal No 2869 of 2007 shall stand transferred to the High Court of Judicature at Bombay for disposal;
- (ii) The appeal arising out of the Transferred Case, namely, Tax Appeal No 4 of 2006 shall stand restored to the file of the High Court of Judicature at Bombay.

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11 The appeal and the transferred case are accordingly disposed of.

12 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)