

SECTION-IIIB

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

CIVIL APPEAL NOS. 2869 OF 2007

Sterlite Optical Technologies Ltd.

.....Appellant(s)

Versus

Commissioner of Customs & Central Excise

.....Respondent(s)

OFFICE REPORT

The matter above-mentioned was listed before the Hon'ble Court on 15th December, 2016 when the Court was pleased to pass the following Order:

“Civil Appeal No.2869 of 2007 and Transferred Case No.22 of 2011

Heard Mr. S.K. Bagaria, learned senior counsel along with Mr. Alok Yadav, learned counsel for the appellant and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

Having heard learned counsel for the parties, we find that the following questions emerge for consideration :

- (1) Whether the assessee would be entitled to the benefit of the decision rendered in Sarla Performance Fibers Ltd. Etc. vs. Commissioner of Central excise, Surat-II [(2016) 5 SCALE 793] despite the amendment of Section 3(1) of the Central Excise Act, 1944 with effect from 11.5.2001 on the foundation that the Notification No.125/84-CE issued in exercise of power under Rule 8(1) of the Central Excise Rules, 1944 has not been withdrawn and remained in force till 1.4.2003 when the notification was rescinded?
- (2) Whether the assessee can claim the benefit under the notification though the principal statute got amended singularly on the ground that the notification was not earlier withdrawn or rescinded?
- (3) Whether the assessee will be entitled to the benefit of the Export Promotion Capital Goods scheme which replaced the Export Oriented Units contract?
- (4) Whether the assessee will be entitled to exoneration of penalty imposed by the adjudicating authority on the ground that it followed the authorities in SIV Industries Ltd. vs. Commissioner of Central Excise & Customs [(2000) 3 SCC 367] and Commissioner of Central Excise, Vishakhapatnam – II vs. NCC Blue Water Products Ltd. [(2010) 12 SCC 761] and in view of the later judgments of the Tribunal?
- (5) Whether the assessee will be entitled to the benefit under Rule 4(5) of the Cenvat Credit Rules?
- (6) Whether the assessee would be liable to pay the due and the penalty because the final de-bonding order was rendered only on 10.07.2003?

Apart from the aforesaid questions, Mr. Radhakrishnan, learned senior counsel appearing for the Revenue submits that the fraud has been committed by the assessee and when there is fraud, everything stands

vitiated. This aspect has been seriously contested by the learned senior counsel appearing for the appellant. Learned counsel for the parties are at liberty to argue the same when the matter is finally heard.

It is made clear that the learned counsel shall restrict their arguments to the points framed here in above. They shall file their written notes of submissions within four weeks hence.

Registry is directed to list the matter in the first week of March, 2017.”

It is submitted that Mr. Praveen Kumar, Advocate for the appellant has on 30.01.2017 filed written submission on behalf of appellant and the same are placed with appeal paper books.

Service is complete on sole respondent as sole respondent is represented by Counsel.

The matter is listed before the Hon'ble Court with this Office Report.

Dated this the 6th day of March, 2017.

ASSISTANT REGISTRAR

Copy to:-

1. Mr. Praveen Kumar, Advocate
B-122, Sector – 30, Noida.

2. Mr. B.K. Prasad, Advocate
Central Agency Section, Supreme Court of India,
New Delhi.

ASSISTANT REGISTRAR