

ITEM NO.101

COURT NO.3

SECTION IIIB

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)

(With appln.(s) for vacating stay and vacating stay)

WITH

T.C.(C) No. 22/2011

C.A. No. 6353/2016

(With appln.(s) for taking on record additional documents and
Office Report)

Date : 15/12/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. S.K. Bagaria, Sr. Adv.
Mr. Rohan Shah, Adv.
Mr. Alok Yadav, Adv.
Mr. Rohit Jain, Adv.
Mr. Somnath Shukla, Adv.
Mr. Udit Jain, Adv.
Mr. Dhruv Bhattacharya, Adv.
Mr. K. Ajit Singh, Adv.
Mr. Praveen Kumar, AOR

Mr. B. Krishna Prasad, Adv.

Mr. V. Lakshmi Kumaran, Adv.
Ms. L. Charanya, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Victor Das, Adv.
Mr. Anandh K., Adv.
Mr. M.P. Devanath, AOR

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Mr. A.K. Panda, Sr. Adv.
Ms. Nisha Bagchi, Adv.
Mr. Ajijit Prasad, Adv.
Ms. Pooja Sharma, Adv.
Mr. B. Krishna Prasad, Adv.

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

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Notification No.125/84-CE issued in exercise of power under Rule 8(1) of the Central Excise Rules, 1944 has not been withdrawn and remained in force till 1.4.2003 when the notification was rescinded?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notification though the principal statute got amended singularly on the ground that the notification was not earlier withdrawn or rescinded?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 hereinabove. 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.

Civil Appeal No. 6353 of 2016

Let the matter be de-tagged.

List the matter in the last week of January, 2017 to enable Mr. Radhakrishnan, learned senior counsel to obtain instructions from the Department whether the point raised is still requires to be adjudicated or it is no longer *res integra*.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master