

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3175 OF 2007

M/S. MOSER BAER INDIA LTD. ... Appellant

VERSUS

COMMISSIONER OF CUSTOMS, NOIDA ... Respondent

O R D E R

The appellant-assessee is engaged in the manufacture of CD (Recordable) and CD-ROM falling under Chapter Heading 85 of the Central Excise Tariff Act, 1985. It is a 100% EOU unit and with that character, the appellant is entitled to import raw material as well as capital goods and other goods specified in the EXIM policy and Custom Notification No. 53/97-Cus dated 03.06.1997 without payment of duty. It is also an admitted case that as a 100% EOU, the appellant is also entitled to procure raw materials, capital goods and all other goods specified in the EXIM policy under the Excise Notification No. 1/95-CE dated 04.01.1995 without payment of excise duty under CT3 certificate.

It had imported certain materials, viz., Epoxy Resin, Pyrolitic Reflective Toughened glass, Silicon Adhesive and sealant, cold rolled M.S. Dec Profile Sheets, etc., after taking permission from the Development Commissioner, Government of India, which was granted to the appellant vide orders dated 13.09.2000.

The case of the appellant was that the aforesaid goods were for captive use which were required for the purpose of manufacturing CD (Recordable) and CD-ROM and were also to be used in connection with the production of the aforesaid items and therefore, no duty was paid. The Revenue, however, was of the opinion that some duty free items claimed by the appellant as capital goods were used for construction and decoration of the factory building and therefore, were not entitled to the exemption in terms of Notification No. 53/97-Cus or Notification No. 1/95-CE. It resulted in the issuance of Show Cause Notice dated 27.03.2002 and the demand mentioned in the said notice was confirmed after hearing the appellant. The Commissioner also confirmed the said demand. Even the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') has affirmed the order of the authorities below thereby dismissing the appeal of the appellant herein. However, insofar as the penalty that was imposed by the Adjudicating Authority is concerned, that has been set aside by the CESTAT on the ground that the declaration submitted by the appellant was *bona fide* and not contumacious.

We would also like to state here that the Show Cause Notice dated 23.07.2002 was beyond the normal period of limitation prescribed under Section 28 of the Customs Act and therefore, provisions of proviso to that Section was

invoked to claim the extended period of limitation. The appellant had specifically raised the issue that the notice was time barred and it was not permissible for the Revenue to seek shelter under the proviso to Section 28 inasmuch as there was no misdeclaration or misstatement on the part of the assessee-appellant in the declaration that was filed by it while clearing the aforesaid goods.

The aforesaid plea of the appellant contending that the Show Cause Notice was time barred is rejected by the CESTAT in the following words: -

"18. It is also seen that the appellants have executed bond to comply with all the conditions of the two Notifications and for proper use of the said goods. As per the terms and conditions of the bond, the appellants are bound to pay the duty occurring on account of any flout, if noticed subsequently, of provisions of Notifications. Hence the demand made in this case is not hit by any time bar."

In order to determine the aforesaid issue, it would be necessary to traverse through Exemption Notification No. 53/97-Cus. dated 03.06.1997 as amended from time to time. Relevant portion thereof with which we are concerned reads as under: -

"In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table below (hereinafter referred to as the goods), when imported into India, or procured from a Public Warehouse or Private Warehouse appointed or licensed, as the case may be, under section 57 or section 58 of the said Customs Act, for the purpose of manufacture of articles for export out of India, or for being used

in connection with the production or packaging or job work for export of goods or services out of India or for trading of goods for export out of India as referred to in paragraph 9.21 of the Export & Import Policy, 1997-2002 notified by the Government of India under the Ministry of Commerce Notification No. 1/97, dated the 31st March, 1997, as amended from time to time (hereafter referred to as the said Export and Import Policy) by hundred percent Export Oriented Units approved by the Board of Approvals for hundred percent Export Oriented Units, appointed by the notification of Government of India in the Ministry of Industry, Department of Industrial Policy and Promotion or the Development Commissioner concerned, as the case may be, for this purpose (hereinafter referred to as the said Board), from the whole of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under section 3 of the said Customs Tariff Act subject to the following conditions....."

A reading of the aforesaid notification clearly manifests that it is not necessary that the material which is imported into India has to be used in the manufacture of articles which are to be exported out of India. Even if the said material is used "for the purpose of manufacture of articles" or "for being used in connection with the production or packaging or job work", the same shall still be covered by the aforesaid notification and thus would not attract any customs duty. The table which mentions the goods that are entitled to exemption specifically include "capital goods". It could not be disputed that the aforesaid good were imported by the appellant-assessee for construction of its unit from where the goods meant for export were to be manufactured and therefore, these goods are in the nature of capital goods. We, therefore, hold

that the CESTAT is not right in taking a contrary view and denying the benefit of the aforesaid Exemption Notification to the appellant.

Even on the question of limitation, we do not agree with the view taken by the CESTAT. No doubt, the appellant had furnished the bond. However, the extended period of limitation could have been invoked if the goods meant for particular purpose were not consumed and used by the assessee itself and instead, the assessee had diverted the said goods in the domestic market by sale thereof to third parties. In such a situation, naturally there would have been infraction of the bond in question and the Revenue was entitled to invoke the larger period of limitation. However, in the instant case, goods were used for the purpose for which they were imported. This is accepted even by the CESTAT and on this very ground, insofar as the penalty is concerned, the same has been set aside. Once, that is done by the CESTAT, it had its implication on the issue of limitation as well. It, thus, turns out to be a case where there is no willful misdeclaration, misstatement or diversion of the goods in question. As stated above, the goods are used for the purpose for which they are imported. If the perception of the Revenue was that these are not captive goods or the benefit of Notification No. 53/97 is not available to the assessee, the period of limitation started at the threshold and therefore, on the

facts which were known to the Revenue the Show Cause Notice could have been issued within a normal period of limitation prescribed under Section 28 which was six months at the relevant time.

The appeal, thus, succeeds both on the ground of limitation as well as on merits and is hereby, allowed setting aside the order of the CESTAT.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
October 07, 2015.

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. 3175/2007

M/S. MOSER BAER INDIA LTD.

Appellant(s)

VERSUS

COMMR OF CUSTOMS, NOIDA

Respondent(s)

(With appln. (s) for permission to place addl. documents on record and office report)

Date : 07/10/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. V. Sridharan, Sr. Adv.

Mr. S. Vasudevan, Adv.

Ms. Nupur Maheshwari, Adv.

Mr. M. P. Devanath, Adv.

For Respondent(s)

Mr. A. K. Panda, Sr. Adv.

Mr. Subas C. Acharya, Adv.

Ms. Sunita Rani Singh, Adv.

Mr. B. Krishna Prasad, Adv.

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

Application for permission to place additional documents on record is allowed.

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]