

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). 5951/2004

COMMNR. OF CUSTOMS & CENTRAL EXCISE, GOA

Appellant(s)

VERSUS

M/S. DEMPO ENGINEERING WORKS LTD.

Respondent(s)

(with appln. (s) for stay and office report)

Date : 15/04/2015 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. Jaideep Gupta, Sr. Adv.
Mr. Rajiv nanda, Adv.
Mrs. B. Sunita Rao, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. L.P. Dhir, Adv.
Mr. Pranab Kumar Mullick, Adv.
Mrs. Sona Mullick, Adv.
Mr. Sebat Kumar Deuria, Adv.
Mr. Nishant Piyush, Adv.
Mr. Vikas Nautiyal, Adv.

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

The appeal is disposed of in terms of the signed order.

(SUMAN WADHWA)
AR-cum-PS(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5951 OF 2004

Commnr. Of Customs & Central Excise, Goa Appellant(s)

VERSUS

M/s. Dempo Engineering Works Ltd. Respondent(s)

O R D E R

The respondent-Company is manufacturing floating pontoons which it describes as 'Pantoon with spuds'. According to the respondent these goods are covered by Chapter Heading 8905.00 which attracts nil duty. On the other hand, the Department took the position that the goods are classifiable under chapter Heading 8907.00 which attracts duty @ 20%. This resulted in issuance of show cause notice dated 4.1.1996. The respondent submitted that its product should not be classified under Chapter 8907.00.

After giving opportunity to the respondent to file reply and hearing the respondent, the Commissioner passed the Order-in-Original dated 12.3.1996 affirming the contents of the show cause notice and holding that his product would fall under Chapter Heading 8907.00. Against this order, the respondent filed appeal before the Tribunal. The Tribunal vide impugned order has allowed the appeal. A perusal of the impugned order shows that primary reason

given by the Tribunal while allowing the appeal is altogether different ground. The Tribunal has come to the conclusion that the product is not marketable and, therefore, would not attract any excise duty. After discussing this aspect in detail the Tribunal at the end has also returned the finding that the manufacture of 'Pantoon with Spuds' is classified under 8905.00. However, we find that on this finding no reasons are assigned.

We have gone through the order of the Commissioner which deals with the issue of classification in detail. In case, the Tribunal was not agreeing with the order of the Commissioner, the order of the Tribunal should have been a speaking order dealing with the reasoning given by the Commissioner and stating as to why the said reasoning was faulty.

Mr. Jaideep Gupta, learned senior counsel appearing for the Department, has argued, and rightly so, that the issue as to whether the product is marketable or not was not even raised by the respondent in reply to the show cause notice nor was it argued before the Commissioner and therefore on that ground the Tribunal could not have allowed the appeal.

In the aforesaid circumstance, we set aside the order of the Tribunal and remit the case back to the Tribunal to

decide the issue of classification by passing a speaking order.

The appeal is disposed of accordingly.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 15.4.2015.