

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). 8181/2003

M/S. SURANA INDUSTRIES LTD.

Appellant(s)

VERSUS

COMMNR. OF CUSTOMS

Respondent(s)

(with office report)

Date : 11/03/2015 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. Bhaskar Vali,Adv.for
Mr. R. N. Keshwani,Adv.For Respondent(s) Mr. Yashank Adhyaru,Sr.Adv.
Ms. Binu Tamta,Adv.
Mr. Arijit Prasad,Adv.
Mr. B. Krishna Prasad,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. 8181 OF 2003

M/s. Surana Industries Ltd.

Appellant(s)

VERSUS

Commnr. Of Customs

Respondent(s)

O R D E R

The appellant before us has brought to our notice that there is a conflict of opinion amongst the Members of the Tribunal. The learned Judicial Member by his separate judgment directed the matter to be remanded to the Commissioner of Customs to re-adjudicate the matter within two months from the date of the receipt of the order. This remand was ordered in view of the technical expert opinion produced by the appellant that the items in question are non-alloy melting scrap and not non-alloy steel re-rollable scrap. The learned Judicial Member further held that on a perusal of three certificates of experts also it was not possible for him to say that the imported item is a re-rollable scrap. The learned technical Member, however, held that the expert opinion of the National Metallurgical Laboratory would have to be given preference over the other individual opinions furnished and of the certificate of the

Chartered Engineer dated 22.10.2002 which was produced much later.

In so holding, the learned technical Member dismissed the appeal filed by the petitioner herein. Finally, he observed:

"As regards imposition of redemption fine, I observe that the appellants-importer have mis-declared the goods and hence the goods are confiscable. I find that for the goods valued at Rs.2,36,02,104/- the redemption fine levied is Rs.18,00,000/- which comes to 7.63% which cannot be considered as excessive and I confirm the same. The appellants have been imposed a penalty of Rs.6,00,000/- which is 2.54% of the goods valued at Rs.2,36,02,104/-, which cannot be considered as excessive warranting reduction, as the adjudicating authority has already taken a lenient view and I confirm the same. I, therefore, do not find any merit in the appeal and the appeal fails and is dismissed."

Because of this difference of opinion, points of difference were referred to a third Member. The third learned Member agreed with the decision taken by the learned technical Member and thus held that the matter would not have to be remanded for *de novo* consideration and dismissed the appeal. This is how the appeal before us arises.

Learned counsel for the appellant has supported the learned Judicial Member's judgment and said that it was correct in law. Counsel for the Revenue stuck to its guns and said that the learned technical Member and the third Member who disagreed with the learned Judicial Member are on

the other hand correct in law. We find that this is an old appeal of 2003 and the appellant before us is a small scale industry on whom penalty of rupees six lakhs has been levied.

Without going into any further details, we find that since the goods (post confiscation) have since been sold, it would be in the interest of justice to set aside the penalty of rupees six lakhs while otherwise maintaining the order of the learned technical Member and the learned third Member. This is also in the fitness of things considering that the National Metallurgical Laboratory had differed from the other expert opinions and therefore there were two views possible. We order accordingly. However, there will be no order as to costs.

The appeal is disposed of accordingly.

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

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

New Delhi;
Date: 11.3.2015.