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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.7812 of 1997@@
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M/s. Daulat Ram Industries ...Appellant (s)

Versus~

The Collector of Customs, New DelhiRespondent (s)

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Learned counsel for the Revenue seeks further time on the ground that what is in question had not been raised at any earlier stage. We decline to give such time for the following reasons:

This appeal was admitted on 1st December, 1997. At that stage, the court recorded: "It has been stated on behalf of the petitioner (assessee) that the respondents (Revenue) have now accepted the stand of the petitioner that electrical resistance alloy is not 'stainless steel'."

When this appeal reached hearing on 20th March, 2002, this court recorded:

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"When this appeal was admitted, it was recorded that it had been stated on behalf of the appellant that the respondents had accepted the stand of the appellant that electrical resistance alloy was not stainless steel. Although four years and more have passed and the matter has been adjourned in the past to

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enable the respondents to obtain instructions in regard to the assessments for subsequent years, a further adjournment on the ground of lack of instructions is sought.

Adjourned beyond the Holi vacation. No further adjournment on this ground will be available."

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Then, on 4th April, 2002, when the matter next reached

hearing, this is what the court ordered:

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"Since the stage at which notice was issued on the special leave petition, the stand of the appellants has been that the respondents have accepted their contention that electrical resistance alloy is not stainless steel. Time to enable the respondents to take instructions in this behalf has been granted from time to time. On the last occasion, on 20th March, 2002, this was recorded once again and it was stated that no further adjournment on this ground would be available. Even so, learned counsel for the respondents tells us that he has no instructions. We could, in the circumstances, proceed upon the basis that what the appellants say is correct since, despite all the time that has passed, the respondents cannot controvert it. Even so, one further adjournment we shall give.

Adjourned to 11th April, 2002, upon which date, if instructions have not been received till then, we shall proceed upon the basis indicated above."

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Learned counsel for the Revenue now states that it does appear that the Revenue has proceeded upon the basis that electrical resistance alloy is not stainless steel, insofar as shipments subsequent to the shipment in appeal is concerned, having regard to the copies of the Bills of Entry produced by
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the appellant. Learned counsel also states that the officers of the Revenue concerned are present but they are not the officers who had dealt with these consignments and, therefore, he is unable to get proper instructions.

We have already recorded that unless instructions had been obtained, we would proceed upon the basis that the Revenue cannot controvert the contention of the appellant that the Revenue has accepted that electrical resistance alloy is not stainless steel. Instructions have not been obtained over a period of four and half years. It must, therefore, be assumed, supported by the said copy of the Bills of Entry, that the contention is correct.

The civil appeal is, therefore, allowed. The judgment and order under appeal is set aside. Consequential reliefs shall follow.

The respondents shall pay to the appellants the costs of the appeal.

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(N. Santosh Hegde)@@
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(Shivaraj V. Patil)@@
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New Delhi,
April 11, 2002.