

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3745 OF 2007

M/S JSW STEEL LTD.

... Appellant

VERSUS

COMMISSIONER OF CENTRAL EXCISE

... Respondent

O R D E R

The appellant-assessee herein entered into a contract dated 10.04.1996 with one M/s. China Iron & Steel Industry and Trade Group Corporation, Beijing, China, for supply and installation of Air Separation Plant (ASP). When the goods arrived in India, the appellant filed Bill of Entry on 25.06.1997 for warehousing of these goods. The same was permitted on execution of required bond by the assessee. There was a specific period allowed within which the appellant had to remove the goods for home consumption. These goods were removed from time to time. Since the appellant could not remove the goods within the original period of warehousing, he sought extensions thereof as well. The extended period expired on 31.03.2002. During this period, the goods which were warehoused were removed substantially but still some goods remained to be cleared. As these goods were not cleared by the period permitted, the remaining goods were treated as unauthorised goods warehoused. It resulted in Show Cause Notice dated 30.03.2005 whereby a demand of duty of Rs. 3,07,65,945/- was

raised in respect of uncleared goods which lay in the warehouse beyond the extended period by invoking the provisions of Section 72 of the Customs Act, 1962 (hereinafter referred to as 'Act'). The demand raised in the Show Cause Notice along with interest and penalty was confirmed. We may mention here that the duty amount was paid by the appellant on 29.08.2003 but without any interest. This amount was adjusted in the Show Cause Notice itself.

The appellant preferred appeal against the said order before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') which also dismissed the appeal vide orders dated 05.04.2007.

Mr. S. K. Bagaria, learned senior counsel appearing for the appellant, fairly conceded that the case is covered by the judgment of this Court in '*Kesoram Rayon v. Collector of Customs, Calcutta*' [1996 (5) SCC 576]. However, he endeavored to argue that the said judgment does not depict the law correctly and, therefore, made a fervent plea to refer the matter to larger Bench.

After hearing learned senior counsel for both the sides on this aspect, we are of the view that *Kesoram Rayon* lays down the law correctly and there is no need to refer the matter to larger Bench.

Since the matter is covered by *Kesoram Rayon*, this appeal has to fail on this aspect.

Another issue which is raised by Mr. Bagaria is that there are wrong calculations of the interest which is sought

to be charged. In this behalf, two infirmities are pointed out which are as follows: -

(1) It is stated that in terms of sub-Section (2) of Section 61 of the Act, the interest could be collected only for the period from the expiry of the initial warehousing period of one year till the date of payment of duty. He has pointed out that the interest is charged from the beginning, i.e., 27.06.1997 itself, whereas the liability to pay interest arose only from 27.06.1998.

(2) Second error which is pointed out is that higher rate of interest is charged than the interest which was prevalent during the said period. This is demonstrated as under: -

"Department Calculation

From date	To date	No. of days	Rate of Interest
27/06/1997	13/05/2002	1752	24
13/05/2002	29/08/2003	473	15

Calculation with Interest Free Days

From date	To date	No. of days	Rate of Interest	Corresponding Notification No.
27/06/1998	29/02/2000	612	20	81/91-Cus. (N.T.) dated 23/12/1991-J
01/03/2000	12/05/2002	802	24	34/2000-Cus. (N.T.) dated 12/05/2000
13/05/2002	29/08/2003	473	15	28/2002-Cus. (N.T.) dated 13/05/2002"

Mr. Bagaria is right in his submissions on both these counts. Therefore, while dismissing the appeal, insofar as interest is concerned, we direct the Commissioner to

recalculate the interest. He may complete this exercise within one month from the date of receipt of the copy of this order and indicate the exact amount of interest which is payable by the appellant. Further, the Commissioner would be entitled to adjust the sum of Rs. 2 crores which has already been paid in this behalf. The balance amount shall be paid by the appellant within two months from the date of communication of the order by the Commissioner. On payment of the amount of interest, the Bank Guarantee furnished by the appellant shall stand discharged.

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

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

New Delhi;
October 27, 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. 3745/2007

M/S JSW STEEL LTD.

Appellant(s)

VERSUS

COMMNR. OF CENTRAL EXCISE

Respondent(s)

Date : 27/10/2015 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. S. K. Bagaria, Sr. Adv.
Mr. Gaurav Juneja, Adv.
Mr. Shikhar Srivastava, Adv.
Mr. K. Ajit Singh, Adv.
M/s. Khaitan & Co.

For Respondent(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Shankar Divate, Adv.
Mr. Arijit Prasad, 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

The appeal is dismissed in terms of the signed order.

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

[Signed order is placed on the file.]