

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2988 OF 2006

TATA CHEMICALS LTD. . . APPELLANT

VERSUS

COMMISSIONER OF CENTRAL EXCISE, RAJKOT . . RESPONDENT

O R D E R

The present appeal, by special leave, is preferred against the order dated 14.02.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in appeal No. E/480/04 whereby the Tribunal has disposed of the appeal by expressing the opinion in the following manner:-

"8. The dispute regarding the assessable value of the soda ash for the period 1981 to 1985 came before the Tribunal and the Tribunal rejected the claim. The decision is reported as Tata Chemicals vs. CCE - 2000 (121) ELT 36.

9. We have gone through the order passed by the Tribunal. In para 5, the Tribunal specifically noted the contention of the appellant where the reliance was placed on the letter dated 15.12.70, 1.2.71 and 2.4.71 and other evidence produced by the appellant and after going through the evidence, the Tribunal rejected the claim and held that value of gunny bags used for packing of soda ash manufactured by the appellant are includible in the assessable value of soda ash. The same evidence is now relied upon by the appellant before us to show that there was arrangement for return of the packing material."

The aforesaid paragraphs clearly demonstrate that the Tribunal has followed the reasoning that it had followed for the period 1981 to 1985. Mr. B.L. Narasimhan, learned counsel for the appellant would contend that the claim of the assessee before the authorities was absolutely different inasmuch as two contentions were raised before the authorities, namely, that excise duty was not leviable on the packing materials supplied by the buyer, and the second, the same was durable and returnable, but, the Tribunal has adverted to the second aspect by expressing its view on the basis of the decision rendered by it pertaining to the assessment years 1981 to 1985 and not adverted to the issue that no levy could have been imposed on the packing material, if it is supplied by the purchaser and the said fact proven to the satisfaction of the authorities that it has been used for packing.

Learned counsel for the appellant fairly submitted that he does not intend to press the issue with regard to durability and returnability. He has confined his submission with regard to levy of excise duty on the packing material supplied by the buyer.

Mr. Rohtagi, learned Attorney General, we must appreciably state, submitted with all fairness at his command that as far as the first aspect is concerned, if the packing materials are supplied by the buyer, the levy

could not have been imposed. The said contention is absolutely correct in view of the law laid down in M/s. Hindustan Polymers Vs. Collector of Central Excise¹.

As the Tribunal has not adverted to the said facet, we allow this appeal and remand the matter to the Tribunal exclusively for delineation on the said issue. Accordingly, the order of the Tribunal is set aside to the said limited extent. We may hasten to clarify, our setting aside of the order would not have no effect whatsoever for the assessment years 1981 to 1985. There shall be no order as to costs.

.....J.
(DIPAK MISRA)

.....J.
(V. GOPALA GOWDA)

NEW DELHI
AUGUST 21, 2014

1 (1989) 4 SCC 323

ITEM NO.101

COURT NO.8

SECTION III

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). 7251-7302/2000

M/S. TATA CHEMICALS LTD.

Appellant(s)

VERSUS

COLLECTOR OF CENTRAL EXCISE

Respondent(s)

WITH C.A. No. 2988/2006 (With Office Report)

C.A. No. 6071/2001 (With Office Report)

C.A. No. 1951/2003 (With Office Report)

Date : 21/08/2014 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Ravinder Narain, Adv.

C.A. 7251-7302/2000 Mr. Rajan Narain, Adv.

Mr. Ajay Aggarwal, Adv.

Ms. Mallika Joshi, Adv.

Ms. Shravani Shekhar, Adv.

Ms. Ruchika, Adv.

C.A. 2988/2006 Mr. B.L. Narasimhan, Adv.

Mr. Alok Yadav, Adv.

Mr. M. P. Devanath, Adv.

CA 6071/2001 Mr. B. Krishna Prasad ,Adv.

CA 1951/2003

For Respondent(s) Mr. Mukul Rohtagi, A.G.

C.A. 7251-7302/2000 Mr. Rajiv Dutta, Sr. adv.

Mr. B. Krishna Prasad, Adv.

Mr. Rupesh Kumar, Adv.

Mr. Arijit Prasad, Adv.

Mr. A. T. M. Sampath ,Adv.

C.A. 1951/2003 Mr. Krishna Kumar R.S., Adv.

Mr. Rajesh Kumar, Adv.

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

C.A. No. 7251-7302/2000

Heard Mr. Ravinder Narain, learned counsel for the appellant and Mr. Mukul Rohtagi, learned Attorney General.

Judgment reserved.

Learned counsel for the parties are at liberty to file written notes/submissions within a week hence.

C.A. No.6071/2001 and C.A. No. 1951/2003

These appeals are de-tagged and be listed after eight weeks.

C.A. No. 2988/2006

Civil appeal is allowed in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)