

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 499 OF 2006

COMMISSIONER OF CUSTOMS, NEW DELHI ... Appellant

VERSUS

M/S TEXCOMASH EXPORT ... Respondent

O R D E R

The respondent herein had exported children's garments to Russia under the claim of drawback during the period from November, 1993 to June, 1994. On this export, the Assistant Collector of Customs, Inland Container Depot (ICD) had passed the order assessing the goods at Rs. 210 per set for the purposes of drawback. Against this fixation of value, appeal was preferred but the Collector (Appeals) rejected the appeal filed by the respondent vide orders dated 27.01.1995. These orders were also challenged by the respondent by filing revision applications. The said revision applications were decided by the Joint Secretary, Government of India, on 16.08.1995. He set aside the order of the Collector (Appeals) and remanded the case back to the Assistant Collector for *de novo* consideration, after making fresh enquiries from the reputed exporters in association with the representative of the respondent for the purpose of fixing the value of the goods. Even in the second round,

the value was fixed at Rs. 210 per set and appeal against that was again dismissed by the Commissioner of Customs (Appeals). In the revision application, the Joint Secretary, however, passed orders dated 26.03.1999 enhancing the value of goods to Rs. 242/- and ordered that the amount of drawback thereon may be settled as per law. Thus, the appellant issued show cause notice dated 07.01.2000 in which certain frauds were alleged against the respondent and on that basis entire issue was sought to be reopened.

After giving chance to the respondent to file its reply, which was filed before him, the Commissioner of Customs confirmed the demand made in the show cause notice by passing detailed order dated 28.11.2003. This order has been set aside by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') by the impugned judgment dated 15.03.2005. This is how the Department is in appeal in the present proceedings challenging the order of the CESTAT.

On perusal of the order of the CESTAT, it gets reflected that one of the reasons given by the CESTAT was that the Commissioner could not have issued show cause notice dated 07.01.2000 and reopen the proceedings when the higher authorities, viz., the Joint Secretary in the revision application had passed the order dated 26.03.1999, and in this manner, order of the Commissioner had merged

into the order passed by the revisionary authority. On that basis, principles of *res judicata* are applied.

We need not go into all these issues. The fact remains that show cause notice could not have been issued under Section 28 of the Customs Act by the Commissioner reopening the issue when it had been settled by the higher authority, viz., the Joint Secretary.

Even if certain material came to the notice of the Commissioner, which became the basis for the show cause notice, the only proper course was to challenge the said order of the Joint Secretary by taking out other proceedings, as admissible in law. On this ground alone, we confirm the order of the CESTAT. However, at the same time, we give liberty to the appellant herein to take out appropriate proceedings, in accordance with law. It would be open to the appellant to invoke the principles of Section 14 of the Limitation Act insofar as limitation is concerned as the matter is kept pending in various judicial fora, including this court.

The proceedings taken out by the appellant can be defended by the respondent by taking all the defences which would be available to the respondent in law.

The civil appeal is, otherwise, dismissed with the  
aforesaid observations.

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

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

New Delhi;  
July 31, 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. 499/2006

COMMR.OF CUSTOMS, NEW DELHI

Appellant(s)

VERSUS

M/S TEXCOMASH EXPORT

Respondent(s)

Date : 31/07/2015 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. K. Radhakrishnan, Sr. Adv.

Mr. Rupesh Kumar, Adv.

Mr. T. M. Singh, Adv.

Mr. Karan Seth, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. S. K. Bagaria, Sr. Adv.

Mr. C. Mukund, Adv.

Mr. K. Ajit Singh, Adv.

Mr. Ashok Jain, Adv.

Mr. Pankaj Jain, Adv.

Mr. Bijoy Kumar Jain, 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(Suman Jain)  
COURT MASTER

[Signed order is placed on the file.]