

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 2176 OF 2009

UNION OF INDIA & ORS.

APPELLANT(S)

VERSUS

M/S PRIME LEATHERS

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2099 OF 2009,
CIVIL APPEAL NO. 4352 OF 2009 and
TRANSFER PETITION (C) NO. 2055 OF 2017

O R D E R

Civil Appeal No. 2176/2009, Civil Appeal No. 2099/2009 and Civil Appeal No. 4352/2009:

Having regard to the nature of the order which we propose to pass in these appeals, it is not necessary to state the factual matrix of these cases in detail. Suffice is to state that according to the Directorate of Revenue Intelligence (hereinafter referred to as "the Revenue"), the respondents in these appeals are the exporters of leather goods. They had been exporting unfinished leather but had been showing in their invoices that the leather goods were finished goods and on that basis seeking exemption from payment of export duty. In this manner, according to the Revenue, the respondents avoided to pay huge amounts of duty. The premises of these respondents were raided by the D.R.I. and

again, according to the Revenue, the aforesaid practice adopted by the respondents was accepted and they also deposited the duty in the sum of Rs. seventy lakh, Rs. one crore and Rs. one crore respectively.

Show cause notices were issued by Proper Officers, except in the case of M/s Prime Leathers. At that stage, the respondents filed their writ petitions in the High Court. The High Court while allowing the writ petitions has inter alia come to the finding that the deposits were not made by them voluntarily and the confessions were also not voluntary. It is also mentioned that in some of the cases even the show cause notices have not been issued. In these circumstances, the High Court directed refund of the aforesaid amounts deposited by these respondents subject to furnishing of some appropriate security. At the same time, the Revenue was also given opportunity to issue appropriate show cause notices and conclude the proceedings within one year.

It is pointed out by learned Additional Solicitor General that this Court had held that Proper Officer was not empowered to issue such show cause notices. In order to overcome the aforesaid embargo, there was an amendment in Section 28 of the Customs Act, 1962 by incorporating sub-section (11)

vide Act 14 of 2011. According to the Revenue, the effect of the said section is to validate all the notices issued earlier even by the Proper Officers. However, the issue about the interpretation of the provision was raised before the High Court of Delhi in the case of M/s Mangali Impex Ltd. vs. Union of India and Ors., 2016 SCC Online Del 2597, and the High Court has held that the aforesaid provision would operate prospectively and the effect of that would be that the notices issued earlier would not be validated. Against that judgment of the Delhi High Court, the Revenue has preferred special leave petition in which notice has been issued and Order dated 1.08.2016 has been passed staying the operation of the aforesaid judgment.

Notwithstanding the above, the Revenue has not proceeded with the adjudication of the said show cause notices. It is stated by the learned Additional Solicitor General that it has happened because of the Circular(s) issued by the C.B.D.T. to award the decision in the special leave petition filed in this Court. However, in the case of M/s Prime Leathers proceedings in the show cause notice are continuing. Because of the aforesaid reasons, insofar as these three appeals are concerned, no adjudication has taken place.

Having regard to the above, when these matters

are pending for the last almost 10 years and no adjudication has taken place, it may not be appropriate to interfere with the directions of the High Court to refund the amount to the respondents. We may note that insofar as M/s Prime Leather is concerned, the amount has already been refunded and the respondent has also furnished security in terms of the directions contained in the impugned judgment. In the other two appeals, the amount of Rs. 1 crore each collected by the respondent shall also be refunded by the appellant to the respondent, subject to furnishing adequate solvent security.

Insofar as adjudication of the show cause notices is concerned, we leave it to the appellant to proceed with the same as per the advise of the competent authority.

The appeals stand disposed of in the aforesaid terms.

Transfer Petition (C) No. 2055/2017:

This transfer petition is filed on the premise that issue raised in this petition is same which is the subject matter of Special Leave Petition (C) Nos. 28299 of 2016 and 28325 of 2016.

After perusing the writ petition that is filed in the High Court, we find that it is not so inasmuch

as in these petitions *vires* of notifications and circulars are challenged.

The Transfer Petition is, accordingly, dismissed.

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

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
AUGUST 2, 2018

ITEM NO.14

COURT NO.5

SECTION IV

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). 2176/2009

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

M/S PRIME LEATHERS

Respondent(s)

WITH

C.A. No. 2099/2009 (IV)

C.A. No. 4352/2009 (IV)

SLP(C) No. 28299/2016 (XIV)

SLP(C) No. 28215/2016 (XIV)
(FOR PERMISSION TO FILE ANNEXURES ON IA 3/2016)

SLP(C) No. 28325/2016 (XIV)

T.P.(C) No. 2055/2017 (XVI-A)
(FOR ADMISSION and IA No.115090/2017-STAY APPLICATION and IA
No.9964/2018-I/A FOR SEEKING DISMISSAL OF TP)

Date : 02-08-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Mr. Maninder Singh, ASG
Mrs. Nisha Bagchi, Adv.
Mr. Ritesh Kumar, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Prabhas Bajaj, Adv.
Ms. Pooja Sharma, Adv.
Mr. Shreyash Bhardwaj, Adv.
Mr. B. Krishna Prasad, AOR

Mrs. Anil Katiyar, AOR

Mr. Shalinder Saini, AOR

For Respondent(s)

Mr. Jagjit Singh Chhabra, AOR

Mr. Rajeev K. Virmani, Sr. Adv.
Mr. Sandeep Narain, Adv.
Mr. Rishabh Bhargav, Adv.
Ms. Anjali Agarwal, Adv.
M/s S. Narain & Co., AOR

Mr. Ajay Aggarwal, Adv.
Ms. Mallika Joshi, Adv.
Mr. Rajan Narain, AOR

Mr. V. Lakshmikumaran, Adv.
Mr. Yogendra Aldak, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Victor Das, Adv.
Ms. Apeksha Mehta, Adv.
Mr. Manish Rastogi, Adv.
Mr. Shrey Ashat, Adv.
Mr. M. P. Devanath, AOR

Mr. Praveen Swarup, AOR

Mr. B. Krishna Prasad, AOR

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

C.A. No(s). 2176/2009, C.A. No. 2099/2009 and C.A. No. 4352/2009
and T.P.(C) No. 2055/2017:

The appeals stand disposed of and the transfer petition stands
dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

SLP(C) No. 28299/2016, SLP(C) No. 28215/2016 and SLP(C) No.
28325/2016:

Leave granted.

Since the pleadings are complete, let the appeals be listed in
the regular list on the week commencing 11.09.2018 within first ten
matters on Board.

(SUSHIL KUMAR RAKHEJA)
AR CUM PS

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file.)