

SUPREME COURT OF INDIA

Tata Chemicals Ltd

Vs.

Union of India

S.L.P. (Civil)No.9423-9432 of 2000

(Dr. Arijit Pasayat,J. P.Sathasivam and Aftab Alam,JJ.)

24.03.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Since the Special Leave Petitions, Writ Petitions, Civil Appeal and the Transfer Applications involve identical issues, they are taken up together for disposal. When SLP (C) Nos.9423-9432 of 2000 were listed for admission, it was noted that earlier SLP (C) Nos.8203-8212 of 2000 (*M/s Saurashtra Chemicals Ltd. v. Union of India & Ors¹*.) filed against the judgment and order dated 21st January, 2000 of Central Excise and Gold Control Appellate Tribunal, New Delhi (in short 'CEGAT') were dismissed with the observations that the orders of the Designated Authority, Ministry of Commerce, New Delhi, were recommendatory; and that an appeal lies against determination; and that determination had yet to be made by the Central Government.

2. A two-Judge Bench hearing the Special Leave Petitions (Civil) Nos. 9423-9432 of 2000 noted that the challenge before the CEGAT was not only against the determination of the Designated Authority but also against the Customs Notification dated 27th October, 1998 whereby anti-dumping duty was imposed. The Bench noted that this aspect was not apparently brought to the notice of the Bench when it passed the order dated 11th May, 2000, and the order of CEGAT itself does not refer to the Customs Notification dated 27th October, 1998 which was impugned in the present Special Leave Petitions. The Bench observed that because of the same probably the Court was led to believe that the appeal had been filed before the issuance of the notification of determination. Therefore, the notice was issued in the SLPs. When the matter was heard by a two-Judge Bench on 5.3.2002, the following order was passed:

"It is submitted by Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for the respondents that against the impugned order of the CEGAT a two Judge Bench of this Court by order dated May 11, 2000 declined to entertain the S.L.Ps. Filed by another party. In respect of the same impugned order S.L.Ps. Nos.9423-9432/2000 filed by the petitioner, another two Judge Bench by Order dated

August 24, 2000 held that the S.L.Ps. would be maintainable and ordered notice. In view of this apparent conflict, submits the learned Additional Solicitor General, the cases may be placed before a three Judge Bench. Mr. Shanti Bhushan, learned senior counsel and the other senior counsel also adopted the same submission. Mr. P. Chidambaram, the learned seniors counsel appearing for the petitioner submits that a writ petition is already filed therefore this question may not be relevant. In view of the importance of the question involved in these cases we think that it would be appropriate to place the cases before a three Judge Bench. The Registry is directed to seek orders from Hon'ble the Chief Justice of India and place the cases before a three Judge Bench preferably at an early date."

3. The Bench felt that there was conflict in the two orders. The order dated 11.5.2000, referred to above reads as follows:

"We see no reason whatsoever to entertain these special leave petitions. It is perfectly clear now that we have seen the provisions of the Act that the order of the Designated Authority is purely recommendatory. The appeal that lies is against the determination and that determination has to be made by the Central Government. For this reason, we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petitions."

The matter was accordingly referred to a three-Judge Bench and that is how the matter is posted before us.

4. The order dated 24.8.2000 clarified the position as to why notice was issued notwithstanding the earlier dismissal of several S.L.Ps. The distinctive feature was challenge to the Customs Notification dated 27th October, 1998. This aspect was not apparently noted by the two-Judge Bench when the matter was taken up on 11.5.2000. It is also noted in the order dated 24.8.2000 that determination as contemplated by Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on dumped articles and for determination of injury) Rules, 1995 (in short 'Rules') has taken place with the issuance of the Notification dated 27th October, 1998 and, therefore, the appeal could be maintainable to CEGAT. The order dated 24.8.2000 has brought out the clearly distinctive features. Since the order dated 24.8.2000 reflects the correct position the SLPs., therefore, were rightly entertained. The dismissal of the SLPs. by order dated 11.5.2000 was on account of the fact that the relevant aspects were not brought to the notice of the Bench.

5. That being so, we are of the view that the appeals before the CEGAT were clearly maintainable when challenge was to the determination made is clear from the issuance of the Notification dated 27th October, 1998.

6. The cases shall be placed before the Bench of two Hon'ble Judges to be dealt with on merits. Ordered accordingly.