

SUPREME COURT OF INDIA

Union of India

Vs.

Green Alloys P. Ltd.

C.A.No.2894 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

28.04.2009

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court directing release of the goods seized from the respondent on furnishing undertaking to pay the duty or other dues which may be found due without furnishing any cash security or bank guarantee for the value of the goods. Certain other directions were given which we are not primarily concerned with. By the Writ Petition (CWP No. 17287 of 2008) the respondent had sought for a direction for release of raw material seized by the Anti Evasion Branch of the Central Excise, Faridabad on 15.9.2008 and also to quash letter of seizure on 24.9.2008 alongwith Panchnama.

3. Stand of the present respondents was that under the Cenvat Credit Rules, 2004, only the finished goods are excisable and there could be no evasion of duty unless the goods are manufactured and cleared. Condition of executing Bond in form B-11 or giving of cash security for releasing the goods was not justified. Bond B-11 was applicable for release of finished goods only.

4. In the reply filed on behalf of the present appellant stand taken is that the present respondent had shown low value addition and paid very less amount of duty from the cash account. The imported scrap was of the value of Rs.70-80 per kg. while finished goods were of the value of Rs.120-130 per kg. They also found that against the declared stock of 453326 kg. aluminium scrap entered in the stock RG-23A Pt-I register, the balance shown was nil. In the table reproduced in para 3 of the written statement, it is mentioned that though there was entry of goods received in register RG-23A, in the register maintained in computer in Excel Sheet, the entry of 7.9.2008 and 8.9.2008 was nil. It is thus pointed out that under Rule 15 of the Cenvat Credit Rules, 2004, the goods were liable to confiscation and penalty."

5. Though the High Court observed that it was not expressing any opinion on the merits yet it went into various aspects and ultimately the direction was given which is impugned in the present appeal.

6. Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous.

7. Learned counsel for the respondent on the other hand submitted that the order of the High Court does not suffer from any infirmity.

8. Learned counsel for the respondent submitted that in a similar case this Court had declined to interfere in SLP (C) No. 30354 of 2008 by order dated 5.1.2009. The order reads as follows: "Subject to granting liberty to the petitioners to issue additional show cause notice, the special leave petition is dismissed."

9. It is pointed out by learned counsel for the appellant that in the instant case two show-cause notices have been issued. We find that while passing an interim order the High Court had given certain categorical findings on merits. It has held that it cannot be held that there was a clear case for confiscation only on the ground that in the computerised excel sheet some of the goods were not entered.

10. The High Court appears to have decided that aspect finally even though that was not the stage

for doing so and that was beyond the scope for adjudication of the writ petition. In the circumstances we direct that the respondent shall be permitted to release goods on furnishing cash security or bank guarantee for 25% of the value of goods. The same shall be done within a period of four weeks. The appeal is allowed to the aforesaid extent.