

SUPREME COURT OF INDIA

Union of India (UOI)

Vs.

Madras Steel Re-Rollers Association

C.A.No.1645 of 2011

(Mukundakam Sharma and Anil R. Dave JJ.)

11.02.2011

ORDER

1. Leave granted.

2. Both these appeals, filed by the Union of India/Central Board of Excise & Customs, being aggrieved by the judgment and order dated 27th June, 2007 passed by the Madras High Court and dated 21st November, 2007 passed by Punjab and Haryana High Court involve similar issues and, therefore, we propose to dispose of both the appeals together by this common judgment and order.

3. In both the appeals, the concerned High Court held that the Circular No. 8/2006 Customs (in short 'the Circular') dated 17.1.2006 is beyond the powers conferred on the Central Board of Excise and Customs (in short the 'Board') under Section 151-A of the Act and, therefore, the said Circular was quashed and set aside.

4. These appeals have been filed contending, inter alia, that such Circulars are issued under the Statute and, therefore, they are Statutory Circulars and, therefore, could not have been quashed in the manner done by the High Court.

5. While passing the aforesaid directions, the High Court recorded its findings in paragraph 8 of the impugned judgments, which also deals with the issue that was required to be considered in these matters.

6. The issue that was raised before the High Court was whether the items imported by the members of the Appellant (Respondents herein) are 'used steel rails' or 'waste/scrap' is essentially a question of fact, that is to be decided by the authorities under the Act. After framing the aforesaid issue for consideration, the High Court

held that in law the assessing authority while adjudicating the issue, functions as a quasi judicial authority and also that the powers exercised by the appellate authority or the Central Government as revisional authority, must be held to be quasi judicial powers. Reference in that context was made to the decision of this Court in the case of *Orient Paper Mills v. Union of India* : AIR 1969 SC 48, wherein this Court held that if the powers exercised by the Collector was a quasi judicial power then that power cannot be controlled by the directions issued by the Board. This Court went on to hold that there is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. Relying on the aforesaid findings, counsel appearing for the Respondents, have submitted before us that unless the quasi judicial authority is allowed to function independently and impartially, the order passed by it cannot be said to be the order passed in accordance with law.

7. Considering the facts and circumstances of the case and relying on the aforesaid decision of this Court, we hold that the Assessing Authorities as well as the Appellate and the Revisional Authorities are creatures of the Act and they perform the functions of the quasi judicial authorities and the orders passed by them are also quasi judicial orders. Therefore, such orders are required to be passed by exercising independent mind and without impartiality and while doing so, such Authorities are required to consider various evidences made available to them. The Circulars issued by the Department which are in the nature of guidance to such Authorities and, therefore the contents of such circulars could also be considered as evidence available before them. On the basis of all the materials available on record including the evidence, the Assessing Authority has come to an independent finding on its own and, therefore, in our considered opinion, the matter can now be allowed to be determined by the Assessing Authority in the light of the aforesaid observations.

8. It must be added that we have not expressed any opinion on the merits of the claims of the parties herein.

9. In terms of the aforesaid observations and directions, we dispose of these appeals requesting the Assessing Authority to consider the matters afresh and de novo in accordance with the observations made herein but leaving the matters entirely to be decided by the Authorities by exercising its own independent mind. To the aforesaid extent, the orders of the High Court stand modified.

10. It is also pointed out that the parties shall be allowed to raise all the issues that may be available to them in accordance with law, including the issue, which were raised before it once but was not entertained.