

Mustan Taherbhai

v.

Collector of Customs, Ahmedabad

(Supreme Court Of India)

HON'BLE MR. JUSTICE S.P. BHARUCHA HON'BLE MR. JUSTICE Y.K.
SABHARWAL HON'BLE MR. JUSTICE ASHOK BHAN

Civil Appeal No. 1998 of 2000 | 30-08-2001

The order under challenge was passed by the New Delhi Bench of CEGAT. It relates to the assessment of the vessel Jagat Priya, which was purchased by the appellants in February, 1993 for breaking. The question before the Tribunal was whether the appellants were required to pay customs duty when the vessel was cleared for breaking. It appears from the judgment of the Tribunal that the matter was argued without reference to facts which are now stated in the special leave petition, namely, that the vessel was built in India and excise duty was paid thereon at the time of its clearance. It was delivered to an Indian party. The contention on these facts is that this was not a transaction of export and import which would render the appellants liable to the payment of customs duty.

2. Reliance by the Tribunal upon the decision of this Court in the case of Union of India & Ors. v. Jalyan Udyog & Ors. would be misplaced if these are, indeed, the facts for that was not a case that related to a vessel that was built in India and cleared for home consumption. We think it appropriate, in the circumstances, that the order under challenge should be set aside and the matter be remanded to the Tribunal to be considered afresh. In so doing, the Tribunal shall determine, first, the facts and then the law. The Tribunal may take note of the judgment of the Bombay High Court delivered on 5th February, 1992 in the case of M/s. Baijnath Melaram v. Union of India & Ors. (Writ Petition No. 1478 of 1983), special leave petitions whereagainst were summarily dismissed. It may be noted that we express no opinion on the merits of the case on either side.

3. Having regard to the fact that the jurisdiction in this case now vests with the Bench of CEGAT at Bombay, the remand is made to that court.

4. Order on the appeal accordingly.

5. No order as to costs.