

SUPREME COURT OF INDIA

Steel Authority of India Ltd.

Vs.

Designated Authority, Directorate General of Anti-Dumping & Allied Duties

C.A.No.241 of 2017

(Ranjan Gogoi and Ashok Bhushan,JJ.,)

17.04.2017

JUDGMENT

Ranjan Gogoi,J.,

1. Order on the admission of this appeal has been kept pending to enable the Court to ascertain the true sweep and purport of the appellate power of this Court under Section 130E(b) of the Customs Act, 1962 (as amended). The language of the above provision of the Act having indicated a very broad and expansive appellate jurisdiction, the precise contours thereof were felt necessary to be determined and the admissibility of the present appeal tested on the aforesaid basis.
2. It may be worthwhile at the very outset to delve into the history of the taxation regime under the Act to notice the changes that had occurred from time to time.
3. Against the assessment of customs duty made by different assessing authorities under the Act, viz., Deputy Collector of Customs/Collector of Customs, initially, an executive appellate remedy before the Collector of Customs and before the Central Board of Customs Excise and Customs, depending on the authority which has passed the initial order of assessment, was provided. There was a power of suo motu revision with the Board as well as a revisional jurisdiction to be exercised on an application by an aggrieved person. The Central Government under Section 131 (originally enacted) and under Section 129DD (Substituted by Act 21 of 1984) was also vested with a revisional jurisdiction.
4. By the Finance Act No.2 of 1980, a quasi-judicial authority, namely, Customs Excise and Gold (Control) Appellate Tribunal (CEGAT) was constituted to hear appeals against orders of the Collector as well as the orders of the Board. The said Tribunal came to be known as Customs, Excise and Service Tax Appellate Tribunal (CESTAT), with the introduction of levy of service tax. The CEGAT and its successor CESTAT were constituted as specialized quasi-judicial appellate bodies to decide all issues relating to duty assessment under the Customs Act. There was no provision of appeal to the jurisdictional High Court against the order of the appellate tribunal. However, under Section 130 of the Act a Reference

jurisdiction was vested in the High Court on a question of law not relating to the determination of any question having a relation to the rate of duty of customs or to the value of the goods for the purpose of assessment. Under Section 130A, introduced by the Finance Act, 1980, a Reference jurisdiction was also conferred in the Supreme Court in case the Appellate Tribunal was of the opinion that on account of a conflict in the decisions of the High Courts on the same question of law, a reference to the Supreme Court is necessary. Under Section 130E(a) an appeal was provided to the Supreme Court from any judgment of the High Court delivered on a Reference, where the High Court certified the case to be a fit one for appeal to the Supreme Court. Under Section 130E(b) against any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment, an appeal was also provided to the Supreme Court. Section 130F of the Customs Act, 1962 provided that the provisions of Civil Procedure Code, 1908 relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 130 as they apply in the case of appeals from decrees of a High Court.

5. An amendment though not of any significant consequence, made in the year 1999 may also be noticed. The reference jurisdiction of the High Court under Section 130 which was to be exercised at the instance of the Appellate Tribunal was continued in respect of orders passed, under Section 129B, by the Appellate Tribunal on or before 1.7.1999. However, under Section 130A substituted by the Finance Act (No.27) of 1999 the Reference jurisdiction in respect of orders passed by the Appellate Tribunal on or after 1.7.1999 was to be exercised by the High Court on an application made to it seeking a reference.

6. The aforesaid position was again altered in the year 2003. Against an order passed by the Appellate Tribunal on or after 1.7.2003 (not being order relating to determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment) an appeal was provided to the High Court if the High Court is to be satisfied that the case involves a substantial question of law. Simultaneously, under Section 130A, the Reference Jurisdiction of the High Court was continued in respect of orders passed by the Tribunal on or before 1.7.2003. Such reference jurisdiction remained circumscribed as before, as already noticed.

7. Under the 2003 Amendment, as against an order passed by the High Court in appeal or on a reference, an appeal to the Supreme Court continued to be provided [Section 130(E)a]. Section 130E(b) remained and continued to provide that against an order passed by the Appellate Tribunal relating among other things determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment, appeal shall lie to the Supreme Court. Section 130F was retained on similar terms as before.

8. By the National Tax Tribunal Act, 2005, a National Tax Tribunal was constituted under Section 5 thereof to hear appeals from "every order passed in appeal by the Income Tax Appellate Tribunal and the Central Excise and Service Tax Appellate Tribunal if the National Tax Tribunal is satisfied that the case involves substantial question of law" (Section 15). Under Section 23 of the National Tax Tribunal Act, 2005 on and from the notified date

all proceedings including appeals and references under direct taxes, and indirect taxes pending before all High Courts stood stand transferred to the National Tax Tribunal. Section 24 provided for an appeal to the Supreme Court against any decision or order of the National Tax Tribunal. With the enactment of the National Tax Tribunal Act, 2005 provisions contained in Section 130A, B, C, D of the Customs Act, 1962 were repealed and the corresponding changes were also brought in Section 130E of the said Act. Section 130F continued to remain in the same form.

9. However, the aforesaid repeal effected by the National Tax Tribunal Act, 2005 would not be very relevant for the present inasmuch as the National Tax Tribunal Act, 2005 has been invalidated by this Court in the case of *Madras Bar Association Vs. Union of India and Another*¹. Therefore, it is, the provisions of the Customs Act, 1962 as prevailing prior to the enactment of the National Tax Tribunal, 2005 which is presently holding the field.

10. What is required to be noticed at this stage is that under the Customs Act, 1962, (as amended), against an order of the appellate tribunal on a question not relating to duty or to classification of goods, an appeal lies to the High Court on a substantial question of law. A reference, again, on a question of law, may also be made to the High Court in respect of similar orders of the appellate tribunal (not relating to determination of duty or classification of goods) passed on or before 1. 7.2003. At the same time, a direct appeal to the Supreme Court against an order of the appellate tribunal on a question relating to the rate of duty or classification of goods has also been provided for. No conditions, restrictions or limitations on the availability of the appellate remedy before the Supreme Court is envisaged in the main Section [130E(b)] though under Section 130F conditions to the exercise of the appellate power seem to have been imposed, the precise application of which is the determination i.e. required to be made by us.

11. Sections 130, 130E and 130F of the Customs Act, 1962 as on date being the relevant provisions in the context enumerated above may now be noticed.

"Section 130. Appeal to High Court. -

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Customs or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied That a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge The power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which –

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

"Section 130E. Appeal to Supreme Court. - An appeal shall lie to the Supreme Court from -

(a) any judgment of the High Court delivered -

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment."

"Section 130F. Hearing before Supreme Court. –

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130E as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 130D or section 131. (2) The costs of the appeal shall be in the discretion of the Supreme Court. (3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 130D in the case of a judgment of the High Court."

12. The history of the customs duty regime traced out above would go to show that after constitution of the Appellate Tribunal, the proceedings of which were/are deemed under the Act to be judicial proceedings, the duty of determining the correctness of questions relating to rate of duty or classification of goods has been primarily cast by the Act on the Tribunal. The Reference jurisdiction of the High Court up to the time of the amendment made in the year 2003 and the Appellate jurisdiction of the High Court thereafter is in respect of questions not relatable to the rate of duty or classification of goods. An appeal also lies to the Supreme Court against the order or the judgment of the High Court either in exercise of the appellate or reference jurisdiction [Section 130E(a)]. At the same time, a direct appeal lies to the Supreme Court against an order passed by the appellate tribunal relating to the question of duty or classification of goods [Section 130E(b)]. Section 130F has weathered all

amendments and make the provisions of the Code of Civil Procedure relating to an appeal to the Supreme Court applicable to appeals under Section 130 of the Act. The question, therefore, would be whether the provisions of Section 130F would be applicable to both sets of appeals that may be filed before Supreme Court, namely, against orders of the High Court as well as those of the appellate tribunal.

13. The language used by the legislature in Section 130F of the Act prescribing the contours of the jurisdiction of the Supreme Court while hearing appeals either against the decision of the High Court in its appellate or reference jurisdiction or while hearing an appeal against the order of the appellate tribunal has been same and has remained unchanged throughout the legislative history of Chapter XV of the Act (dealing with appeals) commencing with the amendment brought about by the Finance Act of 1980. The provisions of the Civil Procedure Code 1908 relating to appeals to the Supreme Court from a decree of a High Court, as far as may be, has been made applicable to all appeals to the Supreme Court under Section 130E of the Act. Section 130F of the Act, all along, has dealt with both sets of appeals that would lie to the Supreme Court, namely, against an order of the High Court in exercise of its appellate or reference jurisdiction, as the case may be, or against the order of the appellate tribunal. If that be so, there is no reason why the appellate power of the Supreme Court under Section 130E(b) against the order of the appellate tribunal should be construed in a manner different from the contours of the appellate power under Section 130E(a) against the order of the High Court.

14. The provisions of the Civil Procedure Code relating to the appeals to the Supreme Court against decrees of the High Court are contained in Section 109 of the Civil Procedure Code which is in the following terms:

"109. When appeals lie to the Supreme Court.- Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies—

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

15. Chapter IV of Part V of the Constitution contains the provisions in Articles 132, 133, 134 and 134A which contemplate appeals to the Supreme Court from any judgment or decree or final order of the High Court in exercise of its civil, criminal or any other jurisdiction provided the High Court certifies that the case involves (i) a substantial question of law as to the interpretation of the Constitution, (ii) a substantial question of law of general importance which in the opinion of the High Court needs to be decided by the Supreme Court.

16. Chapter IV of Part V of the Constitution expressly limits the appellate jurisdiction of the Supreme Court to what has been noticed above. The power of the Supreme Court to grant special leave to appeal under Article 136 is an exception, the scope of which is not in issue and hence need not detain the Court. Article 138 of the Constitution confers power on the Union Parliament to confer further jurisdiction in the Supreme Court with regard to any of the matters in the Union List or any matter as the Government of India and the Government of a State may by special agreement confer, subject to enactment of a law to such effect by the Union Parliament. It is under the provisions of Article 138 that the statutory power of appeal under different statutory regimes has been conferred on the Supreme Court of India. Article 138 of the Constitution could not and does not deal with the scope of the appellate power that a statutory enactment made by the Union Parliament may confer on the Supreme Court. Rather, it deals with the range of the subjects to which the jurisdiction of the Supreme Court may be extended/enlarged by Parliament. Therefore, while construing the extent of the appellate jurisdiction to be exercised by the Supreme Court under a statutory enactment, the role of the Supreme Court as envisaged by the Constitution cannot altogether be lost sight of particularly when different statutes like the Electricity Act, 2003; Companies Act 2013, National Green Tribunal Act, 2010, Telecom Regulatory Authority of India Act, 1997, by way of illustration, expressly limit the appellate power of the Supreme Court to determination of substantial questions of law (Section 100 CPC). To our minds the position should be no different in construing the provisions of Section 130E(b) of the Act though it omits to specifically mention any such limitation.

17. Section 130E(b) of the Act provides for a direct appeal to the Supreme Court against an Order of the appellate tribunal, broadly speaking, on a question involving government revenue. This seems to be in view of the fact that the order that would be under appeal i.e. (order of the appellate tribunal) may go beyond the inter se dispute between the parties and effect upon a large number of assessees. The issue, in such an event, surely will be one of general/public importance. Alternatively, the question raised or arising may require interpretation of the provisions of the Constitution. Such interpretation may involve a fresh or a relook or even an attempt to understand the true and correct purport of a laid down meaning of the Constitutional provisions that may come into focus in a given case. It is only such questions of importance, alone, that are required to be decided by the Supreme Court and by the very nature of the questions raised or arising, the same necessarily have to involve issues of law going beyond the inter partes rights and extending to a class or category of assessees as a whole. This is the limitation that has to be understood to be inbuilt in Section 130E(b) of the Act which, in our considered view, would also be consistent with the role and jurisdiction of the Supreme Court of India as envisaged under the Constitution. Viewed from the aforesaid perspective, the jurisdiction of the Supreme Court under Section 130E(b) of the Act or the pari materia provisions of any other Statute would be in harmony with those contained in Chapter IV of Part V of the Constitution.

18. Two decisions of this Court would require a specific notice at this stage. The first is in the case of *Navin Chemicals Mfg. and Trading Co. Ltd. vs. Collector of Customs*², where this Court has taken the view that the expression "determination of any question having a relation to the rate of duty of customs or, value of goods for purposes of assessment" must be read as

meaning a direct and proximate relationship to the rate of duty and to the value of goods for purposes of assessment. The other is the decision of this Court in *Collector of Customs, Bombay vs. Swastic Woollen (P) Ltd. and Ors.*³, where this Court had an occasion to deal with the ambit of the appellate power under Section 130E of the Customs Act. The following extract from the judgment in *Swastic Woollen* (supra) amply summarize the view of this Court on the above question and therefore would require to be extracted.

"9....Whether a particular item and the particular goods in this case are wool wastes, should be so considered or not is primarily and essentially a question of fact. The decision of such a question of fact must be arrived at without ignoring the material and relevant facts and bearing in mind the correct legal principles. Judged by these yardsticks the finding of the Tribunal in this case is unassailable. We are, however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion, is no ground to interfere with that finding in an appeal from such a finding. In the new scheme of things, the Tribunals have been entrusted with the authority and the jurisdiction to decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate Tribunals act within the law. Merely because another view might be possible by a competent Court of law is no ground for interference under Section 130-E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion, even if superior Court feels that another view is possible, that is no ground for substitution of that view in exercise of power under clause (b) of Section 130-E of the Act."

19. On the basis of the discussion that have preceded, it must therefore be held that before admitting an appeal under Section 130E(b) of the Customs Act, the following conditions must be satisfied:

“(i) The question raised or arising must have a direct and/or proximate nexus to the question of determination of the applicable rate of duty or to the determination of the value of the goods for the purposes of assessment of duty. This is a sine qua non for the admission of the appeal before this Court under Section 130E(b) of the Act.

(ii) The question raised must involve a substantial question of law which has not been answered or, on which, there is a conflict of decisions necessitating a resolution.

(iii) If the tribunal, on consideration of the material and relevant facts, had arrived at a conclusion which is a possible conclusion, the same must be allowed to rest even if this Court is inclined to take another view of the matter.

(iv) The tribunal had acted in gross violation of the procedure or principles of natural justice occasioning a failure of justice.”

20. The above parameters, which by no means should be considered to be exhaustive, may now be applied to the case of the parties before us to decide the primary question indicated at the outset of the present order, namely, whether this appeal deserves to be admitted.

21. The appellant which is a public sector undertaking is engaged in the manufacture of steel in the regular course of its business. The Appellant uses graphite electrodes which it gets imported from China. Against such imports from China, on the basis of the final report of the Designated Authority acting under the Anti Dumping Rules, namely, the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Union of India by a Notification dated 13.02.2015 has imposed anti-dumping duty upon the import of graphite electrodes of all diameters from specific importers operating within the Republic of China for a period of five years. This Notification was challenged by the appellant before the appellate tribunal (CESTAT). On behalf of the appellant it was urged before the learned Tribunal that the Designated Authority had determined the normal value of graphite electrodes within China in an impermissible manner and that there has been application of excessive confidentiality in the report of the Designated Authority. No challenge to the validity of any provision of the Anti Dumping Rules which sets out the procedure for determination of the margin of dumping was laid before the Appellate Tribunal.

22. The learned Tribunal, on due consideration, came to the conclusion that the report of the Designated Authority neither suffers from any excessive imposition of confidentiality nor from the alleged non-consideration of any of the grounds urged on behalf of the appellant. The tribunal further held that the Designated Authority had followed an acceptable method of determining the normal value of electrodes within China by comparing individual work undertaken by an exporter vis-a-vis the export price imposed and that there was no infirmity in the matter of such determination.

23. Specifically, the final findings of the Designated Authority disclose that to determine the margin of dumping the said authority undertook an exercise to find out the normal value of graphite electrodes in the Republic of China and then proceeded to compare the same with the export price of the product. The Designated Authority on conclusion of an arduous determination process came to the conclusion that the margin of dumping varies from one exporter to the other and the percentage thereof varies from 20 to 95 per cent. The Designated Authority also found that the demand for graphite electrodes from the domestic industries had increased by 37% during the period of investigation (2009-2012) whereas the demand from particular exporters in China had increased by 177 per cent during the same period. The Designated Authority further found that during the period of investigation the production of graphite electrodes by the domestic industry had decreased whereas the import of the same from China had increased substantially and, therefore, the domestic industries are suffering material injury due to dumping of graphite electrodes from exporters within China. It is on the basis of the aforesaid findings that the Designated Authority had

recommended that anti-dumping duty be imposed which found manifestation in the Gazette Notification dated 13.2.2015.

24. The above narration clearly disclose that the findings recorded by the learned appellate tribunal on the basis of which the appeal of the present appellant has been dismissed are findings of fact arrived at on due consideration of all relevant materials on record. If that is so, on the ratio of the decision of this Court in the case of *Swastic Woollen* (supra) we will have no occasion to have a re-look into the matter in the exercise of our appellate jurisdiction under Section 130E(b) of the Act.

25. The appeal, consequently, is dismissed by refusing admission.

Judgment Referred.

¹(2014) 10 SCC 0001

²AIR 1988 SC 2176

³(1993) 4 SCC 0320