SUPREME COURT OF INDIA

Commissioner of Customs, Bangalore-1

Vs.

Motorola India Ltd.

C.A.No.10083 of 2011

(Arun Mishra,J., M.R.Shah and B.R.Gavai,JJ.,)

05.09.2019

JUDGMENT

B.R.Gavai,J.,

1. Leave granted in S.L.P.(C) No. 29444/2012 and S.L.P.(C) No. 12755/2015.

2. A short question that arises for consideration in these appeals is, as to whether an appeal from the order of Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the "CESTAT"), involving an issue regarding violation of contained in customs exemption notification, would lie before the High Court under the provisions of Section 130 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act" or to this Court under the provisions of Section 130E of the Customs Act.

3. The facts in the present matter are not in dispute. For the sake of convenience, we would refer to the facts in Civil Appeal No. 10083/2011, inasmuch as the impugned judgment and order(s) in all other connected appeals are passed following the judgment and order passed by the Karnataka High Court in CS TA No. 2/2007.

4. The assessee is a leading manufacturer of pagers. The assessee is entitled to the benefit of Notification No. 30/1997– Customs dated 01.04.1997 (hereinafter referred as the said "notification") by which the materials imported into India for the manufacturing of the pagers were exempted from whole of the customs duty leviable in the First Schedule of the Customs Tariff Act, 1975 and further whole of the additional duty leviable thereon under Section 3 of Customs Tariff Act, 1975. As per the scheme framed under the said notification, the goods imported under the actual user condition were required to be used only for the manufacture of the declared final product. A specific intelligence was received by the Director of Revenue Intelligence to the effect that the assessee had stopped manufacturing of pagers and hence a certain portion of the duty free material imported under the Scheme had been written off in their books of accounts. The officers of the DRI, therefore, took up further investigation in the matter. The assessee was called upon to submit the list of such unutilized items, which are imported under the said notification and

lying unutilized. The assessee submitted a list of such unutilized items with requisite details and sought for further time to link unutilized items to the bill of entry at the relevant assessable value. It was further informed by the assessee that they have ceased to manufacture pagers and as such materials have become obsolete insofar as they are concerned.

5. Not satisfied with the contention of the assessee, the Commissioner of Customs, Bangalore, issued a Notice to the assessee, calling upon it to show cause as to why the customs duty amounting to Rs. 96,17,498/- along with interest at the rate of 24% per annum and the penalty should not be recovered from it. After following the procedure prescribed, the Commissioner of Customs passed an Order in Original on 30.04.2002 thereby, holding that the assessee was liable to pay the aforesaid amount of Rs. 96,17,498/- along with interest and penalty. Being aggrieved thereby, the assessee preferred an appeal before the CESTAT. The CESTAT allowed the appeal. Being aggrieved thereby, the Commissioner of Customs, Bangalore preferred an appeal before the Karnataka High Court under the provisions of Section 130 of the Customs Act. At the stage of final hearing of the appeal, the assessee raised a preliminary objection contending therein, that the order impugned before the High Court amongst other things, also relates to the rate of duty of customs and as such the appeal under Section 130 of the Customs Act was not tenable before the High Court and the appeal will have to be preferred before this Court under the provisions of Section 130E of the Customs Act.

6. The Division Bench of the High Court held that it was called upon to decide whether the terms and conditions of the said notification have been complied with by the assessee or not and whether the levy of duty, interest and penalty were legal or not and whether the CESTAT was justified in setting aside the levy of duty, interest and penalty and all these questions were related to determination of the rate of duty. The Division Bench of the High Court, therefore, held that the appeal under Section 130 of the Customs Act was not tenable before the High Court but would be tenable under Section 130E of the Customs Act before this Court. Being aggrieved thereby, the Revenue is in appeal before this Court.

7. We have heard Ms. Pinky Anand, learned Additional Solicitor General appearing on behalf of the appellant-Revenue and Mr. Balbir Singh, learned Senior Counsel appearing on behalf of the respondent-assessee.

8. For appraising the rival contentions, it would be apposite to refer to Section 130 and Section 130E of the Customs Act, 1962 (as it existed prior to its amendment by the Finance Act, 2018). They read as follows:

> "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) The Principal Commissioner of Customs or 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 Principal Commissioner of Customs or 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.

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130E. Appeal to the 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 the 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 the purposes of assessment."

9. Upon a conjoint reading of the aforesaid provisions, it could thus be seen that an appeal shall lie to the High Court against every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. The only exception carved out is that an appeal shall lie before this Court and shall not lie before the High Court against the order relating, amongst other things, to the determination of any question having relation to the rate of duty of customs or to the value of goods for the purposes of assessment.

10. It could thus clearly be seen that, only if any question having relation to the rate of duty is involved in an appeal or if it relates to value of goods for the purpose of assessment, the appeal would lie to this Court and in all other cases it would lie before the High Court.

11. However, the issue is no more res integra. In a catena of the judgments, right from the judgment of this Court in the case of *Navin Chemicals Manufacturing & Trading Company Ltd. vs. Collector of Customs, reported in*[1], the position has been clarified. We may

gainfully refer to paragraphs 6, 7 and 11 of the said judgment wherein, this Court considered the provisions of Section 130 and Section 130E of the Customs Act. They read thus:

> "6. It is, upon a plain reading of the section, clear that appeals against orders which involve 'determi- nation of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' are specially treated and are required to be heard by a Special Bench. This is what sub-section (3) of Section 129-C provides. Appeals in other matters are to be heard by a Bench consisting of one judicial member and one technical member, subject to the provisions of sub- section (4). Sub-section (4) carves out an exception to the general provisions of sub-section (2) and provides that a member of CEGAT sitting singly can hear appeals in the matters enumerated therein provided that they are not cases where 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' is in question.
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> 7. The controversy, therefore, relates to the mean- ing to be given to the expression 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment'. It seems to us that the key lies in the words 'for purposes of assessment' therein. Where the appeal involves the de- termination of any question that has a relation to the rate of customs duty for the purposes of assessment that appeal must be heard by a Special Bench. Similarly, where the appeal involves the determination of any question that has a relation to the value of goods for the pur- poses of assessment, that appeal must be heard by a Spe- cial Bench. Cases that relate to the rate of customs duty for the purposes of assessment and which relate to the value of goods for the purposes of assessment are advis- edly treated separately and placed before Special Benches for decision because they, more often than not, are of importance not only to the importers who are parties thereto but also to many other importers who import or propose to import the same or similar goods. Since the decisions of CEGAT in such matters would have wide appli- cation they are, by the terms of the statute, to be rendered by Special Benches. The phrase "relation to" is, ordinarily, of wide import but, in the context of its use in the said expression in Section 129-C, it must be read as meaning a direct and proximate relationship to the rate of duty and to the value of goods for the purposes of assessment.
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> 11. It will be seen that sub-section (5) uses the said expression 'determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expres- sion includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemp- tion notification; and whether the value of goods for purposes of assessment should be enhanced or reduced hav- ing regard to certain matters that the said Act provides for. Although this Explanation

expressly confines the definition of the said expression to sub-section (5) of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have given to the said expression above. Ques- tions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notifica- tion relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for pur- poses of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assess- ment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. It could thus clearly be seen that, this Court, while considering the provisions of Section 130 and Section 130E of the Customs Act, has held that where an appeal involves determination of any question that has relation to customs duty for the purpose of assessment or where an appeal involves determination of any question that has relation to the value of goods for the purposes of assessment, such cases will have to be treated separately and have to be given special treatment.

13. Recently, again this Court, in a decision, in the case of *Steel Authority of India Ltd. Vs. Designated Authority, Directorate General of Anti-Dumping & Allied Duties, reported in*[2], has reiterated the same position. It would be appropriate to refer to para 18 of the said judgment which reads as follows:

> "18. Section 130-E(b) of the Act provides for a di- rect appeal to the Supreme Court against an order of the Appellate Tribunal, broadly speaking, on a question in- volving 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 interpreta- tion 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 130-E(b) of the Act which, in our con- sidered 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 per- spective, the jurisdiction of the Supreme Court under Section 130-E(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."

14. It could thus be seen that, this Court has found that when an order of the Appellate Tribunal would go beyond inter se disputes between the parties and may affect a large number of cases, such an issue will be one of general public importance. It has further been found that certain questions raised or arising may require interpretation of the Constitution. It is held that only such questions of general public importance alone are required to be decided by this Court. It has further been held that, by the very nature of a question raised or arising, the same necessarily has to involve issue of law going beyond the inter partes rights and extending to a class or category of assessees as a whole.

15. This Court in the case of Steel Authority (supra), after considering the earlier judgments of this Court, carved out certain conditions which are required to be satisfied before admitting an appeal under Section 130E of the Customs Act. It will be apposite to refer to paragraphs 21 and 22 of the said judgment. Paragraphs 21 and 22 read thus:

> "21. On the basis of the discussion that has preceded, it must therefore be held that before admitting an appeal under Section 130-E(b) of the Customs Act, the following conditions must be satisfied:
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> (i) The question raised or arising must have a direct and/or proximate nexus to the question of determi- nation 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 130-E(b) of the Act.
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> (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 necessi- tating a resolution
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> (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.
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> (iv) The Tribunal had acted in gross violation of the procedure or principles of natural justice occa- sioning a failure of justice.
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> 22. 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 pri- mary question indicated at the outset of the present or- der, namely, whether this appeal deserves to be admit- ted."

16. We are of the considered view that the Legislature has carved out only following categories of cases to which it has intended to give a special treatment of providing an appeal directly to this court.

> “(i) determination of a question relating to a rate of duty;
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> (ii) determination of a question relating to the valuation of goods for the purpose of assessment;
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> (iii) determination of a question relating to the classification of goods under the Tariff and whether or not they are covered by an exemption notification;
>
> (iv) whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for.“

17. Reverting to the present case, it could clearly be seen that the only question that is involved is whether the assessee had violated the conditions of the exemption notification by not utilizing the imported materials for manufacturing of the declared final product and was, therefore, liable for payment of duty, interest and penalty. Neither any question with regard to determination of rate of duty arises nor a question relating to valuation of goods for the purposes of assessment arises in the present case. The appeals also do not involve determination of any question relating to the classification of goods, nor do they involve the question as to whether they are covered by the exemption notification or not. Undisputedly, the goods are covered by the said notification. The only question is as to whether the assessee has breached the conditions which are imposed by the notification for getting exemption from payment of the customs duty or not. The appeals do not involve any question of law of general public importance which would be applicable to a class or category of assessees as a whole. The question is purely inter-se between the parties and is required to be adjudicated upon the facts available.

18. In that view of the matter, we find that the High Court was not justified in holding that the appeals are not maintainable under Section 130 of the Customs Act but are tenable before this Court under Section 130E of the Customs Act.

19. In the result, the appeals are allowed and the impugned orders passed by the High Court are set aside. The appeals are remitted back to the High Court for de novo consideration of the appeals on their own merits.

20. In the facts and circumstances of the case, there shall be no order as to costs.

Judgment Referred

[1]*(1993) 4 SCC 0320*
[2]*(2017) 13 SCC 0001*