

M/s. Steel Authority of India Ltd. Vs. The Commissioner of Central Excise, Bolpur

Civil Appeal No. 3611 of 2015 · Supreme Court of India · 2022-07-28 · B.R. GAVAI · HIMA KOHLI · F2J-C-1226

Full judgment text

M/s. Steel Authority of India Ltd. Vs. The Commissioner of Central Excise, Bolpur

[Civil Appeal No. 3611 of 2015]

B.R. Gavai, J.

1. The appeal challenges the order dated 12th November 2013 passed by the Division Bench of the High Court of Calcutta, thereby dismissing the appeal being CEXA No. 23 of 2013 filed by the present appellant, which was in turn filed, challenging the order dated 26th April 2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (hereinafter referred to as the "CESTAT"), dismissing the application filed by the present appellant seeking rectification of the order dated 30th October 2012 passed by the CESTAT. The application was filed on the ground that while passing the order dated 30th October 2012, the CESTAT did not notice the fact that the application filed by the present appellant was pending before the Committee of Disputes (for short "CoD").
2. The appellant is a Public Sector Undertaking (for short "PSU") of the Government of India. The appellant was served with a Show Cause Notice dated 4th August 2005 by the office of Commissioner of Central Excise by invoking the extended period of limitation and proposing to demand duty of Rs.15.66 crore in respect of the clearances made during the period from July 2000 to December 2004.
3. As per the relevant procedure, the appellant, being a PSU, was required to obtain the clearance from the CoD before taking legal action against other PSUs or Departments of the Government. The CoD, in its Minutes of Meeting dated 2nd November 2006, granted permission to the Company to pursue the appeal only on penalty aspect. As regards, the duty aspect, the CoD held that in the CENVAT Regime, the dispute was revenue neutral.
4. In pursuance of the permission granted, the appellant filed an appeal being Appeal No. Ex.396/ 2006, before the CESTAT. After hearing, the appeal was allowed by the CESTAT setting aside the penalty vide order dated 11th June, 2007.
5. It is the contention of the appellant that in the meanwhile, the authorities issued a series of letters directing the appellant to deposit the duty amount. As such, the appellant deposited the duty demand of Rs.15.66 crore under protest.
6. The appellant, thereafter on 11th February 2011, filed a fresh application before the CoD, requesting for permission to pursue the abovesaid appeal with respect to duty aspect before the CESTAT.
7. This Court, subsequently, vide its judgment dated 17th February, 2011 in the case of Electronics Corporation of India Limited v. Union of India and Others¹, held that the mechanism which was sought to be invoked for getting approval from the CoD, has outlived its utility. This Court, therefore, recalled the directions issued in the earlier orders recorded in the cases of Oil and Natural Gas Commission and Another v. Collector of Central Excise², Oil and Natural Gas Commission v. Collector of Central Excise³ and Oil and Natural Gas Corporation Limited v. City & Industrial Development Corporation, Maharashtra Limited and Others⁴.
8. The appellant, thereafter, moved a miscellaneous application being Misc. Application No. MA(ROA) 507/2011 for restoration of the appeal being Appeal No. Ex.396/ 2006, which was dismissed by the CESTAT vide its order dated 11th June 2007. Vide the said order, the CESTAT had maintained the appeal with regard to the penalty aspect and dismissed the appeal with regard to duty demand as nonmaintainable for want of clearance from the CoD. The restoration application was dismissed by CESTAT on 30th October, 2012. Aggrieved thereby, the appellant approached the High Court. The High Court, vide the impugned order, dismissed the appeal.

9. We have heard Shri V. Sridharan, learned Senior Counsel appearing on behalf of the appellant and Shri Arijit Prasad, learned Senior Counsel appearing on behalf of the respondent.

10. Shri Sridharan submitted that the question whether the appellant was liable to pay interest on the duty or not, has not been considered by any authority. He submitted that the CoD, vide its Minutes of Meeting dated 2nd November 2006, had granted liberty only to challenge the penalty aspect. However, subsequently on demand made by the authorities, the appellant had deposited an amount of Rs.15.66 crore. Therefore, the question as to whether the appellant was liable to pay interest on the duty is to be considered.

11. Shri Prasad, on the contrary, submitted that the appellant had applied for refund and the said claim has been rejected, which has attained finality. He, therefore, submitted that the appellant cannot be permitted to reopen the said issue.

12. We find that the facts of the present case are peculiar. The second application was filed before the CoD on 11th February 2011. In the meantime, the judgment of this Court in the case of Electronics Corporation of India Limited (supra) was delivered on 17th February 2011, which has done away with the mechanism seeking permission of CoD. As such, the second application of the appellant could not be considered by the CoD. The question of interest, therefore, has not been addressed by any of the authorities. In that view of the matter, we are inclined to allow the appeal.

13. In the result, the appeal is allowed on the above terms. The impugned order dated 12th November 2013 passed by the High Court of Calcutta in CEXA No. 23 of 2013 is quashed and set aside. The matter is remitted to the CESTAT for consideration of the limited aspect of interest on duty. No order as to costs.

14. Pending application(s), if any, shall stand disposed of.

.....J. [B.R. GAVAI]

.....J. [HIMA KOHLI]

NEW DELHI;

JULY 28, 2022.

1 (2011) 3 SCC 404

2 1995 Supp (4) SCC 541 dated 11.10.1991

3 (2004) 6 SCC 437 dated 07.01.1994

4 (2007) 7 SCC 39 dated 20.07.2007

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