

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2012
(@ DY.NO.11065 OF 2006)

COMMNR.OF CENTRAL EXCISE, KOLKATA

... APPELLANT

VERSUS

M/S.PLAXAIR INDIA PVT. LTD.

... RESPONDENT

O R D E R

1. Delay condoned.

2. Learned counsel for the sole respondent appears and takes notice. Hence notice waived.

3. Appeal admitted.

4. The issue raised in this appeal lies in a very narrow compass. Therefore, by consent of the learned counsel for the parties to the lis, the matter is taken up for final hearing.

5. The issue in this appeal is, whether penalty and interest can be levied and collected when the duty has been paid before the issue of Show Cause Notice under the provisions of the Central Excise Act, 1944 ('the Act' for short).

6. In the present case, it is the stand of the assessee that the assessee had paid the duty under the provisions of the Act before the issue of the Show Cause Notice and, therefore, not liable for the payment of penalty and interest on the duty so paid under Section 11 AC of the Act.

7. The Tribunal, accepting the stand of the assessee and by relying on the observations made by this Court in the case of Rashtriya Ispat Nigam Ltd. Vs. CCE., Visakhapatnam, 2004 (163) ELT A 53 (SC), has allowed the assessee's appeal and has set aside the demands raised by the Revenue for payment of penalty and interest. The Revenue, being aggrieved by the orders passed by the Tribunal, is before us in this appeal.

8. Mr. R.P. Bhatt, learned counsel appearing for the Revenue, would submit that the issue raised in this appeal is now squarely covered by the decision of this Court in Union of India Vs. Dharmendra Textile Processors & Ors., (2008) 13 SCC p.369 and, therefore, submits that the judgment and orders passed by the Tribunal requires to be annulled by this Court. Per contra, learned counsel appearing for the assessee would submit that though the issue is now covered by the decision of this Court in the case of Dharmendra Textile Processors (supra), the matter

requires to be remitted to the Tribunal for fresh consideration and decision. In this connection, the learned counsel invites our attention to para 20 of the judgment in Dharmendra Textile Processors (supra).

9. This Court, in the aforesaid cited decision after considering the effect of Section 11 AC of the Act, has come to the conclusion that the view expressed in Dilip N. Shroff Vs. C.I.T., (2007)6 SCC 329 is not correctly decided and accordingly has accepted the view taken in S.E.B.I. Vs. Cabot International Capitals Corporation, (2006) 5 SCC 361. After doing so, the three Judge Bench of this Court thought it fit to set aside the orders passed by the High Court and the Tribunal and remitted the matter to the High Court/Tribunal, as the case may be, for fresh adjudication in the light of the decision of this Court in Dharmendra Textile Processors case (supra).

10. In view of the above, we are left with no other alternative but to set aside the orders passed by the Tribunal in Appeal No.E/711/03 dated 16.8.2005 and remit the matter to the Tribunal for its fresh consideration and decision. We also make it clear that the Tribunal now will decide the issue afresh, keeping in view the observations made by this Court in Dharmendra Textile

Processors case (supra).

11. With these observations and directions, the appeal is disposed of. No costs.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI;
FEBRUARY 22, 2012

