

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3265 of 2009

M/s Timken India Ltd. --- --- Petitioner

Versus

1. The Union of India
2. The Commissioner of Central Excise, Jamshedpur
3. The Deputy Commissioner, Central Excise, Customs and Service Tax,
Jamshedpur --- --- Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through: Video Conferencing

For the Petitioner: Mr. Sumeet Gadodia, Advocate
For the Respondents: Mr. Ratnesh Kumar, Advocate

05/09.07.2020 Heard learned counsel Mr. Sumeet Gadodia for the petitioner and Mr. Ratnesh Kumar for the Union of India.

2. The present writ petition was preferred against the notice dated 08.07.2009 issued by the Respondent No. 3 in exercise of powers under section 8 of Customs (Imports of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), 1996 directing the petitioner to pay customs duty amounting to Rs. 53,42,875/- for non-observation of conditions prescribed under Notification No. 32/97-Cus dated 01.04.1997 in respect of goods imported by the petitioner during May 2007 to December 2007.

3. Petitioner has questioned the jurisdiction of the Deputy Commissioner, Central Excise, Customs and Service Tax, Jamshedpur for raising the demand regarding short levy of duty on imported goods on the ground that the goods imported have been diverted for other use after availing concession. Earlier, Demand Notice bearing C. No. V(Bond)01/06/4825 dated 13th November 2007 for the period April 2006- April 2007 was also issued on the petitioner-Company directing it to pay customs duty amounting to Rs. 25,68,998/- Petitioner had challenged the same before this Court in WPT No. 6284/2007. This Court vide order dated 13th December 2007 disposed of the writ petition on the following lines.

“Heard the counsel for the parties.

It appears that in addition to the main relief sought for by the petitioner for quashing the demand notice dated 13.1.2007, it has added one more relief for declaration that the notification dated 1.4.1997 is ultra vires.

Prima facie, we are of the view that the second relief for declaring the notification dated 1.4.1997 ultra vires, is nothing but for the maintainability of the writ petition despite the statutory remedy of appeal available to the petition.

Be that as it may, Dr. Debi Pal, learned counsel for the petitioner has confined his submission only to the extent that the demand notice (Annexure-15) is violative of Article 14 of the Constitution of India inasmuch as before raising the demand no show cause notice or opportunity of hearing was given to the petitioner to explain before the authority concerned that the waste products are not liable to be exported.

We are of the view that before raising any demand at least one opportunity ought to have been given to the petitioner for filing show cause and / or explaining the reasons as to why the demand cannot be fulfilled.

Besides the above, section 28 of the Customs Act contemplates such opportunity to the assessee or the dealer. We, therefore, without expressing any opinion with regard to the merits of the case, dispose of the writ petition by holding that the demand notice dated 13.11.2007 shall be treated as show-cause notice and the petitioner shall file its show cause/explanation within three weeks from today. The Deputy Commissioner, Central Excise, after considering the show cause, shall take a final decision by passing reasoned order within a period of 30 days from the date of receipt of the show cause.

Needless to say that the petitioner shall not claim any personal hearing and the matter shall be decided on the basis of the facts stated in the show cause. It is further made clear that in the event final order is passed by the authority, the petitioner will be at liberty to move the appropriate forum in accordance with law.”

4. In the present matter, stay was granted on 05th August 2009 which was extended by order dated 15th September 2009. It is submitted by learned counsel for the petitioner that in line with the observation made by the Coordinate Bench of this Court in the order dated 13th December 2007, adjudicatory process was started. It is the common case of the petitioner and Revenue that at the present that matter is before the adjudicatory authority to re-ascertain the liability of Custom and Central Excise Duty based on exact nature of the imported goods, after the matter has been remanded vide order dated 07.02.2020 passed by the learned Commissioner (Appeals), Central GST & Central Excise. Before that, Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata had, vide order dated 22.03.2017 in Appeal No. E/430/09, held that the authority had the jurisdiction to decide the issue in question, in view of the order passed by this Court in the Writ Petition No.6284/2007 and remanded the matter to the learned Commissioner (Appeals) to decide it on merits.

5. Petitioner through I.A. No. 3791/2020 has prayed that the instant petition may be disposed of in similar manner as that of WPT No. 6284/2007. The demand notice has to be treated as show-cause notice and adjudicated.

6. Learned counsel for the Revenue has reiterated the journey of the other matter up to CESTAT, Kolkata after passing of the order in WPT No. 6284/2007 and submits that same is presently before the adjudicatory authority in terms of order dated 07.02.2020 passed by Commissioner (Appeals). However, he does not have any objection if the writ petition is disposed of on similar lines.

7. Having regard to the submissions of the parties, noted above, we also do not find any reason as to why the present writ petition be not disposed of on similar lines

as that of WPT No. 6284/2007. The instant writ petition is accordingly disposed of on similar lines in terms of the order dated 13th December 2007. I.A. No. 3791/2020 also stands disposed of. However, we make it clear that we have not expressed any opinion with regard to the merits of the case of the parties.

(Aparesh Kumar Singh, J)

(Anubha Rawat Choudhary, J)

Ranjeet/