

CASE NO.:  
Appeal (civil) 5109 of 2002

PETITIONER:  
M/s. Jay Mahakali Rolling Mills

RESPONDENT:  
Union of India & Ors

DATE OF JUDGMENT: 06/08/2007

BENCH:  
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:  
J U D G M E N T

[With Civil Appeal No. 855 of 2006]

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the order passed by the Division Bench of the Gujarat High Court dismissing the writ petition filed against the orders of the Customs, Excise & (Gold) Control Appellate Tribunal, West Regional Bench, at Mumbai (in short 'CEGAT').

2. Background facts in Civil Appeal No.5109 of 2002 in a nutshell are as follows:

A show-cause notice was issued to the appellant alleging that the appellant was not entitled to the exemption under Notification No.208/83-CE dated 1.8.1983 on the final product falling under Tariff Item No.25(9)(ii). Allegation was that the appellant M/s Jay Mahakali Rolling Mills had contravened the provisions of Rule 174 of the Central Excise Rules, 1944 (in short the 'Rules') read with Section 6 of the Central Excise and Salt Act, 1944 (in short the 'Act') and Rules 173-B; 53 read with 173-G(4); 9(1), 49, 52-A read with 173-G(1), 173-G(2) and 174-F; 54 read with 173-F(3) of the Rules and thereby committed the offence of the nature described in clauses (a), (b), (c) & (d) of sub rule (1) of Rule 173(Q) of the Rules by reasons of wilful misstatement, suppression of facts with intent to evade payment of central excise duty. The appellant was, therefore, asked to show-cause as to why Central Excise Duty amounting to Rs.12,67,006.19, on 3473.705.2.2 MT excisable goods i.e. rolling products manufactured and cleared by it without payment of duty for the period 23.8.1984 to 31.8.1987 should not be recovered from it under Rule 9(2) of the Rules read with proviso to sub-section(1) of Section 11-A of the Act. They were also required to show-cause as to why penalty should not be imposed under clauses (a), (b), (c) and (d) of sub Rule (1) of Rule 173-Q and Rule 9(2) of the Rules. In response, appellant submitted that in Notification No.101/87-C.E. dated 27.3.1987 materials were specified as inputs in view of the amendment. It was submitted that there was no ill-intention or suppression of facts and/or intention to evade duty. Therefore, penalty cannot be imposed. The Adjudicating Authority rejected the contention and held that duty and penalty were leviable. The order was challenged before the CEGAT which dismissed the appeal. It was held that the amendment made to the

notification on 27.3.1987 has prospective application and has no retrospective application as contended by the appellant. It was further held that items which were earlier included were specified. Therefore, the stand that the amendment was merely clarificatory is without any substance. It was held that duty liable was to be reduced by the duty payable from 27.3.1987 to 31.8.1987 amounting to Rs.2,28,898.80. The penalty was reduced to Rs.75,000/-.

3. In the appeal before the High Court stands taken before the Adjudicating Authority and CEGAT were reiterated. The High Court by the impugned order held that there was no basis to accept the contention that the notification was intended to be given retrospective effect. The writ petition was dismissed.

4. In support of the appeal, learned counsel for the appellant submitted that the view of the authority, the CEGAT and High Court cannot be maintained. The amendment brought about by Notification No.101/87-C.E. dated 27.3.1987 was merely clarificatory. The CEGAT wrongly held that the said notification was operating with prospective effect. Material on record pointed to the contrary. Learned counsel for the respondents supported the orders of the courts below and the High Court.

5. Circular dated 31.3.1987 reads as follows:

"C.B.S.E.  
CIRCULARS & CLARIFICATIONS ON  
EXCISE & CUSTOMS  
  
CUSTOMS CIRCULARS

F.No.374/71/86-TRU  
M.O. Fin. (Deptt. Of Rev.)

Dated: 31.3.1987

Subject: Changes in the customs duty structure in respect of ships for breaking up falling under heading No.89.08 and the excise duty structure in respect of ship breaking scrap falling under heading Nos. 72.15 and 73.09 regarding.

In accordance with the customs Notifications Nos. 142/87 to 143/87 and central excise Notification Nos. 101/87 and 103/87, all dated the 27th March, 1987, certain changes have been made in the customs duty structure relating to ships for breaking and excise duty structure in respect of ship breaking scrap.  
xxx

6. Thus, various products like bars and rods made from such ship breaking scrap would now be exempt from excise duty.

7. A bare reading of the circular clearly shows that it was intended to have prospective effect.

8. It is to be noted that in the Circular dated 31.3.1987 it has been stated that the "products like bars and rods made from such ship breaking scrap would "now" exempt from excise duty". The effect of the word "now" is that it is to

operate henceforth. If the intention was to give retrospective effect, it would have been stated to be so specifically.

9. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the Statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.

10. By the amendment relatable to Notification on 27.3.1987, items which were earlier not included were specified as inputs have been included. That being so, the contention that the amendment merely clarified the notification as it stood prior to the amendment, is not untenable.

11. Looked at from any angle the High Court's order does not suffer from any infirmity to warrant interference. The appeal is dismissed.

12. In view of dismissal of Civil Appeal No.5109 of 2002, Civil Appeal No.855 of 2006 is dismissed.