

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO(S). 10483/2013

COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA

APPELLANT (S)

VERSUS

M/S.MASCOT INTERNATIONAL

RESPONDENT (S)

WITH

CIVIL APPEAL NOS. 2407-2408/2014J U D G M E N TA.K.SIKRI, J.CIVIL APPEAL NO(S). 10483/2013

The following substantial question of law has arisen in these appeals for determination by this Court:

"Whether Anti Dumping Duty is applicable on flat roll product of stainless steel having width between 1250 mm to 1280 mm under Notification No. 14/2010-Cus., dated 20.02.2010 as amended by Notification 86/2011-Cus, dated 06.09.2011?"

The factual matrix WHICH is required to be noted for determination of the aforesaid question is in narrow campus and, therefore, the facts which have no bearing on the aforesaid issue are avoided. The material facts which need to be noted are that

vide Notification No. 14/2010-Cus., dated 20.02.2010 anti dumping duty was imposed by the Central Government on certain goods imported from some specified countries which included cold-rolled flat products of stainless steel of width of 600 mm up to 1250 mm of all series with a thickness of upto 4 mm and the subject matter thereof, as per the said Notification, was as under:

"Subject: Anti-dumping (Mid-term Review) investigation limited to the product scope of definitive Anti-dumping Duty imposed on Cold-Rolled Flat Products of Stainless Steel of the width of 600mm upto 1250 mm of all series further worked then Cold Rolled (cold reduced) with a thickness of up to 4 mm, originating in or exported from China PR, Japan, Korea, European Union, South Africa, Taiwan, Thailand and USA- Final Findings."

This mid-term review was at the instance of the indigenous industry and in the representation submitted by it, it was pointed out that the deisgnated authority had restricted the width of the subject goods in the original investigation to 1250 mm. While doing so, no tolerance was prescribed. It is stated that no engineering product can be produced to the exact dimenions without any tolerance. It was further pointed out that in the absence of any tolerance in the recommendations and in the customs notification, the products of width 1250 mm or lower are being declared as having width of 1251 mm to 1300 mm and thereby anti dumping duty is circumvented. After detailed exercise of review, it was decided to specify the tolerance limits as well. Resultantly, Notification dated 08.06.2011 was issued prescribing the tolerance limits in the

following manner:

"In the said notification in para 1 after the Table the following shall be inserted namely:

(a) width tolerance of (+) 30mm shall apply to Mill edged cold rolled flat products of stainless steel of specified width of 1000mm or more but not exceeding 1250mm.

(b) width tolerance of (+) 4 mm shall apply to rim edged cold rolled flat products of stainless steel of specified width exceeding 1000mm but not exceeding 1250mm."

It becomes clear from the aforesaid that those products where the width is 1250 mm, tolerance level up to 1250 mm is to be applied meaning thereby the products' width between 1251 mm to 1300 mm were also supposed to bear anti dumping duty.

Insofar as the respondents herein are concerned, they had imported the subject goods and the width thereof was more than 1250 mm but less than 1300 mm. Their submission was that they were not supposed to pay any anti dumping duty having regard to the fact that vide Notification dated 20.02.2010 anti dumping duty is to be paid only on those steel cold rolled products of the width between 600 mm to 1250 mm. Since their contention was not accepted by the Department, these respondents preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT). The CESTAT has allowed the appeal accepting the contention of these respondents that the Notification prescribes that stainless steel of specified width will not be exceeding 1250 mm and, therefore,

the same is not applicable in the case of the respondents. Challenging that decision these appeals are filed by the Revenue.

From the narration of facts, particularly mid term review culminating in Notification dated 06.09.2011, it becomes clear that tolerance level of + 30 mm is to be taken into account. In this manner, if the width is between 1251 mm to 1280 mm, the anti dumping duty would be payable as per the Notification. The learned counsel for the respondents could not dispute that the imports are of the period after the issuance of the Notification dated 06.09.2011 and the width of their product was between 1251 mm to 1280 mm. These imports were, therefore, clearly liable for anti dumping duty. The CESTAT while deciding the appeal in favour of the respondents did not consider the impact of review Notification dated 06.09.2011 in its proper prospects as indicated above. Accordingly, the appeal is allowed and the order of the CESTAT is set aside with no order as to cost.

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In these appeals, though the question of law is same and, therefore, the judgment of the CESTAT is unsustainable, however, the respondents have pointed out that the goods sought to be imported were not cleared and were re-exported. Since the goods stand re-exported the question of payment of any anti dumping duty would not arise. Therefore, the CESTAT has taken into consideration this ground while setting aside the demand of anti dumping duty and

rightly allowed the appeal of the respondents. This appeal is, accordingly, dismissed.

.....J.  
[A.K. SIKRI]

.....J.  
[ASHOK BHUSHAN]

NEW DELHI;  
JULY 03, 2017.

ITEM NO.7

COURT NO.7

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10483/2013

COMMISSIONER OF CUSTOMS (EXPORT) NHAVASHEV

Appellant(s)

VERSUS

M/S.MASCOT INTERNATIONAL

Respondent(s)

(FOR CONDONATION OF DELAY IN FILING APPEAL. ON IA 1/2013  
FOR STAY APPLICATION ON IA 2/2013)

WITH

C.A. No. 2407-2408/2014

Date : 03-07-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Mr. Maninder Singh, ASG  
Ms. Nisha Bagchi, Adv.  
Mr. P.K. Mullick, Adv.  
Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Kunal Verma, AOR  
Mr. Yogandhera P. Jha, Adv.  
Ms. Priyanka Ashok, Adv.

Mr. Ashish Batra, Adv.  
Mr. Nikhil Jain, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal No(s). 10483/2013

Delay condoned.

The appeal is allowed in term of the signed judgment.

Pending application(s), if any, stands disposed of  
accordingly.

C.A. No. 2407-2408/2014

The appeals are dismissed in term of the signed judgment.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)  
COURT MASTER (SH)

(MALA KUMARI SHARMA)  
COURT MASTER

(Signed reportable judgment is placed on the file)