

2014 (1) ECS (78) (HC-Kar)

In the High Court of Karnataka at Bangalore

Date of Decision: 16.01.2014

COMMISSIONER OF CUSTOMS, BANGALORE

Vs.

**M/s. AMERICAN POWER CONVERSION (INDIA) PVT.
LTD.**

CSTA. No. 24/2006

Arising out of Final Order No. 1206-1208/2005

Appearance:

Sri.Y.Hariprasad, Advocate

For the appellant

Sri.N.Anand, Advocate

For the respondent

CORAM:

Hon'ble Mr. Justice Dilip B. Bhosale

Hon'ble Mr. Justice B.Manohar

"Whether penalty and interest could be imposed when the duty had been deposited before the issuance of the show cause notice?" (Para 2)

"The Supreme Court has taken a view that the payment of duty/differential duty, whether before or after the show cause notice is issued cannot alter the liability for payment." (Para 3)

CSTA filed u/s.130 of the Customs Act, 1962 arising out of order dated 12-07-2005 passed in Final Order No. 1206-1208/2005, in so far as it relates to Final Order No. 1206-1207/2005 praying that this Hon'ble Court may be pleased to:

- (i) Formulate the substantial question of law stated therein.
- (ii) Set aside the order dated 12-07-2005 made in No. 1206-1208/2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, in the interest of justice and equity.

This CSTA coming on for Hearing this day, DILIP B.BHOSALE.J., delivered the following:

P.C.:

This Customs Appeal is directed against the common order dated 12-07-2005 by which three appeals, including the appeal filed by the respondent bearing Appeal No. C/195/2004, were allowed insofar as levy of penalty and interest is concerned. By this order, the CESTAT set aside

the order confirming the penalty and interest passed by the Adjudicating Authority and the Appellate Authority dated 3-7-2003 and 19-02-2004, respectively.

2. The only question that fell for consideration of the CESTAT was whether penalty and interest could be imposed when the duty had been deposited before the issuance of the Show Cause Notice? It appears from the order of the CESTAT that the respondent did not contest the appeal on merits and the only contention urged was that they are not liable to pay penalty and interest in view of the fact that they had paid the duty even before the Show Cause Notice was issued. The CESTAT set aside the penalty and interest based on the judgments of this Court and the Apex Court referred to in the impugned order.
3. Learned counsel for both the sides state that the issue whether the penalty and interest could be imposed when the duty has been deposited before issuance of Show Cause Notice is settled by the Hon'ble Supreme Court in the case of UNION OF INDIA v/s RAJASTHAN SPINNING & WEAVING MILLS in [2009 (238) E.L.T 3 (SC)] and in a group of civil appeals reported in [2008-TIOL-192-SC-CX-LB] (UNION OF INDIA v/s M/s. DHARAMENDRA TEXTILE PROCESSORS). The Supreme Court has taken a view that the payment of duty/differential duty, whether before or after the Show Cause Notice is issued cannot alter the liability for payment. In view of these judgments, learned counsel for the parties fairly state that the law laid down in the judgments relied upon by the Tribunal in the impugned order is no more a good law and that it stands set aside.
4. In this view of the matter, we allow the appeal wherein hardly Rs.50,000/- penalty had been imposed. Accordingly, the order dated 12-07-2005 passed by the CESTAT in Appeal No. C/195/2004 is set aside.