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TATA CHEMICALS LTD.

v.

UNION OF INDIA & ORS.

(Special Leave Petition (C) Nos. 9423-9432 of 2000)

MARCH 24, 2008

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(DR. ARIJIT PASAYAT, P. SATHASIVAM
AND AFTAB ALAM, JJ.)

C

Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995:

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r.18 – Anti-dumping duty – Determination by Designated Authority – Customs Notification dated 27.10.1998 – Imposing anti-dumping duty – Appeal before Customs, Excise and Gold Control Appellate Tribunal – Maintainability of – HELD: Appeals before CEGAT were clearly maintainable when challenge was to determination made as is clear from issuance of Notification dated 27.10.1998.

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A two-Judge Bench hearing Special Leave Petitions No. 9423-9432 of 2000 noted that earlier petitions for special leave filed against the order dated 21.1.2000 passed by the CEGAT were dismissed by the Court on 11.5.2000 with the observations that orders of Designated Authority were recommendatory and appeal would lie against determination which was yet to be made by the Central Government. The said Bench, however, also noted that the challenge before the CEGAT was not only against the determination by the Designated Authority but also against the Customs Notification dated 27.10.1998 imposing the anti-dumping duty, and this fact was not brought to the notice of the Bench which passed the order dated 11.5.2000. The Bench by its order dated 24.8.2000 observed that the SLPs would be maintainable and accordingly issued notice. When the SLPs were listed for

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hearing, the Bench concerned felt that there was conflict in this Court's orders dated 11.5.2000 and 24.8.2000 and, therefore, observed that the matters should be placed before a three-Judge Bench. Accordingly, the matters were posted before the three-Judge Bench.

Giving the verdict on the issue, the Court

HELD: The distinctive feature was challenge to the Customs Notification dated 27th October, 1998. This aspect was not apparently noted by the two-Judge Bench when the matter was taken up on 11.5.2000. It is also noted in the order dated 24.8.2000 that determination as contemplated by Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 has taken place with the issuance of Notification dated 27th October, 1998 and, therefore, the appeal could be maintainable to CEGAT. The order dated 24.8.2000 has brought out the clearly distinctive features. Since the order dated 24.8.2000 reflects the correct position, the SLPs were rightly entertained. The dismissal of the SLPs by order dated 11.5.2000 was on account of the fact that the relevant aspects were not brought to the notice of the Bench. That being so, the appeals before the CEGAT were clearly maintainable, when challenge was to the determination made as is clear from issuance of the Notification dated 27th October, 1998. The cases shall be placed before the Bench of two Judges to be dealt with on merits. [para 4-6] [324-C, D, E, F, G]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) Nos. 9423-9432 of 2000.

From the final Order No. 6-15/2000/AD dated 21/1/2000 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. C/692-697/98-AD and C/63-66/99-AD.

WITH

A SLP (C) Nos. 9781-9790, 20463, 20464 of 2000, T.C. (C) Nos. 6 of 2001, 44 & 45 of 2002, W.P. (C) No. 23 of 2003, W.P. (C) No. 558 of 2000, C.A. No. 7189 of 2005.

B V. Lakshmi Kumaran, Ajay Sharma, Monish Panja, M.P. Devanath, Manu Nair, Mark D'Souza (for M/S Suresh A. Shroff & Co.), M/s. Gagrat & Co., M/s. Suresh A. Shroff & Co., Ajit Kumar Sinha, Sandhya Kohli (for M/s. O.P. Khaitan & Co.), A. Raghunath, M.P. Devanath for the Petitioner.

C Vikas Singh, A.S.G., Shalinder Saini, Rashmi Malhotra, Alka Sharma, T.A. Khan, B.V. Balram Das, Krishnan Venugopal, Abir Phukan, Ajit Kumar Sinha, B. Krishna Prasad, H.K. Puri, Pramod B. Agarwala, R.S. Suri, R.D. Upadhyay, Shreekant N. Terdal, Pratap Venugopal, Surekha Raman, Jhuma Bose (for M/S. K.J. John & Co.) for the Respondents.

D Ankur Saigal, Bina Gupta, Rashmi Rekha, Gaurav Singh, B. Krishna Prasad, Arun Kumar Sinha and A. Raghunath for the Applicants.

The Judgment of the Court was delivered by

E **DR. ARIJIT PASAYAT, J.** 1. Since the Special Leave Petitions, Writ Petitions, Civil Appeal and the Transfer Applications involve identical issues, they are taken up together for disposal. When SLP (C) Nos.9423-9432 of 2000 were listed for admission, it was noted that earlier SLP (C) Nos.8203-8212
F of 2000 (M/s Saurashtra Chemicals Ltd. v. Union of India & Ors.) filed against the judgment and order dated 21st January, 2000 of Central Excise and Gold Control Appellate Tribunal, New Delhi (in short 'CEGAT') were dismissed with the observations that the orders of the Designated Authority, Ministry of Commerce, New Delhi, were recommendatory; and that an appeal lies
G against determination; and that determination had yet to be made by the Central Government.

H 2. A two-Judge Bench hearing the Special Leave Petitions (Civil) Nos. 9423-9432 of 2000 noted that the challenge before the CEGAT was not only against the determination of the

Designated Authority but also against the Customs Notification dated 27th October, 1998 whereby anti-dumping duty was imposed. The Bench noted that this aspect was not apparently brought to the notice of the Bench when it passed the order dated 11th May, 2000, and the order of CEGAT itself does not refer to the Customs Notification dated 27th October, 1998 which was impugned in the present Special Leave Petitions. The Bench observed that because of the same probably the Court was led to believe that the appeal had been filed before the issuance of the notification of determination. Therefore, the notice was issued in the SLPs. When the matter was heard by a two-Judge Bench on 5.3.2002, the following order was passed:

“It is submitted by Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for the respondents that against the impugned order of the CEGAT a two Judge Bench of this Court by order dated May 11, 2000 declined to entertain the S.L.Ps. filed by another party. In respect of the same impugned order S.L.Ps. Nos.9423-9432/2000 filed by the petitioner, another two Judge Bench by Order dated August 24, 2000 held that the S.L.Ps. would be maintainable and ordered notice. In view of this apparent conflict, submits the learned Additional Solicitor General, the cases may be placed before a three Judge Bench. Mr. Shanti Bhushan, learned senior counsel and the other senior counsel also adopted the same submission. Mr. P. Chidambaram, the learned seniors counsel appearing for the petitioner submits that a writ petition is already filed therefore this question may not be relevant. In view of the importance of the question involved in these cases we think that it would be appropriate to place the cases before a three Judge Bench. The Registry, is directed to seek orders from Hon’ble the Chief Justice of India and place the cases before a three Judge Bench preferably at an early date.”

3. The Bench felt that there was conflict in the two orders. The order dated 11.5.2000, referred to above reads as follows:

A "We see no reason whatsoever to entertain these special
leave petitions. It is perfectly clear now that we have seen
the provisions of the Act that the order of the Designated
Authority is purely recommendatory. The appeal that lies
is against the determination and that determination has to
B be made by the Central Government. For this reason, we
decline to exercise jurisdiction under Article 136 of the Con-
stitution of India and dismiss the special leave petitions."

The matter was accordingly referred to a three-Judge
Bench and that is how the matter is posted before us.

C 4. The order dated 24.8.2000 clarified the position as to
why notice was issued notwithstanding the earlier dismissal of
several S.L.Ps. The distinctive feature was challenge to the
Customs Notification dated 27th October, 1998. This aspect was
D not apparently noted by the two-Judge Bench when the matter
was taken up on 11.5.2000. It is also noted in the order dated
24.8.2000 that determination as contemplated by Rule 18 of
the Customs Tariff (Identification, Assessment and Collection
of Anti-Dumping Duty on dumped articles and for determination
of injury) Rules, 1995 (in short 'Rules') has taken place with the
E issuance of the Notification dated 27th October, 1998 and,
therefore, the appeal could be maintainable to CEGAT. The
order dated 24.8.2000 has brought out the clearly distinctive
features. Since the order dated 24.8.2000 reflects the correct
position the SLPs., therefore, were rightly entertained. The
F dismissal of the SLPs. by order dated 11.5.2000 was on
account of the fact that the relevant aspects were not brought to
the notice of the Bench.

G 5. That being so, we are of the view that the appeals before
the CEGAT were clearly maintainable when challenge was to
the determination made is clear from the issuance of the
Notification dated 27th October, 1998.

6. The cases shall be placed before the Bench of two
Hon'ble Judges to be dealt with on merits. Ordered accordingly.

H R.P.

Matters pending.