

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). 1264-1265 OF 2008

COMMISSIONER OF CUSTOMS, NEW DELHI

Appellant (s)

VERSUS

M/S. SIDDHARTHA POLYMERS LTD. & ANR.

Respondent(s)

(With appln(s) for stay)(FOR FINAL DISPOSAL)

WITH

Civil Appeal Nos.3580-3581 of 2008 – With appln. for stay & O/Report

Civil Appeal Nos.4353-4355 of 2008 – With appln. for c/d in filing appeal, stay, exemption from filing c/c of the impugned judgment & O/R

Date: 16/09/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Mr. V. Shekhar, Sr.Adv.

Ms. Aruna Gupta, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. S. Ganesh, Sr.Adv.

in CAs.1264-65/08: Mr. P.S. Sudheer, Adv.

Mr. Ragvesh Singh, Adv.

Mr. Rishi Maheshwari, Adv.

Mr. Anne Mathew, Adv.

Mr. Prem Ranjan Kumar, Adv.

Mr. Nilotpall Sharma, Adv.

in CAs.3580-81 & Mr. R. Venkataramani, Sr.Adv.

4353-55/08: Mr. Prem Ranjan Kumar, Adv.

Mr. Awanish Sinha, Adv.

Mr. Nilotpall Sharma, Adv.

Mr. Himanshu Shekhar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeals admitted.

The appeals are allowed with no order as to costs.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.1264-1265 OF 2008

COMMISSIONER OF CUSTOMS, NEW DELHI

...APPELLANT (S)

VERSUS

M/S SIDDHARTHA POLYMERS LTD. & ANR.

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 3580-3581 OF 2008
CIVIL APPEAL NOS. 4353-4355 OF 2008

ORDER

Appeals admitted.

This batch of Civil Appeals is filed by the Department against the decisions of CESTAT, New Delhi, dated 19th June, 2007 and 14th August, 2007.

For the sake of convenience we refer to the facts in the case of M/s Siddhartha Polymers Ltd. & Anr.

A Show Cause Notice was issued on 31st March, 2003 alleging that the imported consignments had been mis-declared both in regard to description and value. In the Show Cause Notice it was alleged that Prime Quality Goods (P.C. Sheets) were claimed as re-generated/recycled which goods have been under valued at around US \$ 1055 per M.T. as against the normal value of over US

\$ 3500 per M.T. Accordingly, the notice proposed to recover

short levied duty of around Rs. 10 crores under Section 28 of the Customs Act, 1962 + penalty under Section 112. The Show Cause Notice was contested by the assesseees.

Suffice it to state that the Commissioner (Adjudication), New Delhi, came to the conclusion that as per Trade and Industry Practice only Prime Quality P.C. Sheets were used in the advertising/signage Industry and the P.C. Sheets manufactured out of recycled/regenerated polycarbonate did not find any use in the advertising/signage Industry because the recycled/regenerated P.C. Sheets had spots and other impurities visible to the naked eye in the said sheet. Adjudicating Authority analysed several documents. The documents consisted of invoices, certificate of origin, certificate issued by the manufacturer, documents submitted by the Indian Consulate in Hongkong, samples manufactured by the foreign supplier etc. It is after examining these documents at great length that the Commissioner

(Adjudication), New Delhi, came to the conclusion that the P.C. Sheets imported by the noticee companies, which in turn were used in the advertising/signage Industries were not made from recycled/regenerated material as claimed by the noticee. Therefore, it was held that P.C. Sheets imported by the noticee Companies were Prime Quality Sheets and that the noticee Companies had mis-declared the same both in terms of description and value as regenerated/recycled P.C. Sheets. On the question of valuation, the Commissioner found that the lowest average

export price from Korea to India of P.C. Sheets during the period 2000-2002 was US \$ 3580

per M.T. and, therefore, that value constituted the correct assessable value for all the goods imported during the period 1998 to September, 2001. Consequently, the demand notices were confirmed.

Aggrieved by the said decision the matter was carried in appeal by the respondents – assessee to the Tribunal. By the impugned judgment the Tribunal has, after recording the submissions of the counsel on both sides, held that on perusal of clearance Bills of Entry and Invoice it cannot be said that the goods in question have not been described in any of the documents. According to the Tribunal there was no mis-declaration in terms of description as the documents described the Items as P.C. Sheets or Rolls. According to the Tribunal, therefore, there was no mis-declaration or mis-description of the goods as found by the Commissioner.

At this stage we may state that in all these cases the point which arises for determination is that whether P.C. Sheets imported by the noticees were made out of recycled or re-generated polycarbonate? This point has not been discussed or analysed in detail by the Tribunal which is the final fact finding authority. After noticing the arguments advanced on both sides the Tribunal merely states that there is no evidence either on the point of mis-description or value and it straightaway comes to the conclusion that the findings given by the Commissioner are unsustainable.

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In our view, the impugned judgment of the Tribunal is perfunctory. It does not analyse the evidence on record. Whether the Adjudicating Authority was right or wrong is not being answered by us? Our objection is directed only to the way in which the Tribunal has disposed of the appeals filed by the assessee before it. Therefore, keeping all questions open and keeping all contentions on both sides expressly open, we set

aside the impugned judgments of the Tribunal dated 19th June, 2007 and 14th August, 2007 and remit the matters to the Tribunal for de novo consideration in accordance with law, both on the question of mis-description as well as on the question of under valuation. We reiterate that we express no opinion on the merits of the case. Accordingly, the Department's Civil Appeals are allowed with no order as to costs.

The Tribunal is requested to hear and dispose of these appeals within a period of six months from today. It is made clear that during the pendency of the matters before the Tribunal, Department shall not take any coercive steps.

.....J.
[S.H. KAPADIA]

New Delhi,
September 16, 2008

.....J
[B. SUDERSHAN REDDY]