

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.6708 OF 2013

COMMISSIONER OF CUSTOMS BANGALORE

APPELLANT(S)

VERSUS

M/S. SHIVA ANALYTICALS (INDIA) LIMITED

RESPONDENT(S)

O R D E R

1 The respondent - assessee had availed benefit of 100 per cent exemption from payment of customs duty, for the import of capital goods. This was hedged with two conditions; that its export obligations fixed by the Development Commissioner under the exemption policy had to be fulfilled and also that the final products could not be sold outside the Domestic Tariff Area (DTA) without fulfilling the condition of the positive Net Foreign Exchange (NFE).

2. Apparently, the assessee could not fulfill the export obligation which was fixed at Rs.20,73,75,000/-; it could instead fulfill only to the extent of Rs.3,89,87,054/-. It also violated the condition imposed i.e. that it could not sale outside the DTA. The actual sales in that regard were in the volume of Rs.9,41,89,191/-.

3. Show cause notice was issued; and this culminated in imposition of duty at around ₹ 1.54 crores and equivalent amount as interest.

4. The assessee appealed to the assessed tax which by its

impugned order partly allowed its plea and directed the concerned adjudicating authority to impute the liability after taking into the amount the depreciated value of the capital goods which was the subject matter of the customs duty.

5. Having heard learned counsel for the parties and having considered the material on the record, the Court is of the opinion that for the purpose of calculating duty and interest, the respondent - assessee should be given the benefit to the extent of valuation based upon the exports already made (i.e. Rs.3,89,87,054/-). The export commitments were fulfilled to this extent is not in dispute.

6. In the circumstances, the impugned order is modified. Instead of the depreciated value, a proportion may be duly worked out taking into account the export commitment actually fulfilled by the respondent - assessee while working out the duty liability component payable as well as its liability, towards interest.

7. The appeal is partly allowed in above terms.

8. Pending application(s), if any, also stand disposed of.

.....J.
[S. RAVINDRA BHAT]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
4th OCTOBER, 2023

ITEM NO.105

COURT NO.8

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6708/2013

COMMISSIONER OF CUSTOMS BANGALORE

Appellant(s)

VERSUS

M/S. SHIVA ANALYTICALS (INDIA) LIMITED

Respondent(s)

WITH

C.A. No. 7083-7086/2014 (IV-A)

C.A. No. 9195-9197/2014 (IV-A)

Date : 04-10-2023 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Rupesh Kumar, Adv.
Mr. V.C.S. Bharathi, Adv.
Mr. H.R. Rao, Adv.
Ms. Nisha Bagchi, Adv.
Ms. Ruchi Gour Narula, Adv.
Ms. Sunita Singh, Adv.
Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) Dr. Shamsuddin, Adv.
Mr. Shibu Devasia Olickal, AOR
Ms. Beena Victor, Adv.
Mr. Anup Kumar Pandey, Adv.
Mr. Shishir Pandey, Adv.
Mr. Jogy Scaria, AOR

Mr. G V Chandrashekar, Sr. Adv.
Mr. N K Verma, Adv.
Ms. Apeksha D, Adv.
Ms. Anjana Chandrashekar, AOR

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

C.A. No.6708/2013:-

The appeal is modified in terms of the signed order.

Pending application(s), if any, are also disposed of.

C.A. No. 7083-7086/2014 & C.A. No. 9195-9197/2014:

List the matters after four weeks.

(SWETA BALODI)

COURT MASTER (SH)

(BEENA JOLLY)

COURT MASTER (NSH)

(Signed order is placed on the file)