CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I
APPEAL NO. C/52246-52248/2015

[Arising out of Order-in-Appeal No. ASR-CUSTM-PRV-APP-287-14-15 dated 12.01.2015 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of hearing/decision: 12.07.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

M/s Ralson India Ltd : **Appellant(s)**

VS

C.C. Ludhiana : **Respondent(s)**

Appearance:
Present for the Appellant(s): Shri Amar Pratap Singh (Advocate)
Present for the Respondent(s): Shri Atul Handa (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. **62573-62575** /2018

Per : **Ashok Jindal**

The appellant is in appeal against the impugned orders wherein safeguard duty has been demanded in terms of Section 8C of the Customs Tariff Act, 1975.

2. The facts of the case are that the appellant is engaged and manufacturer of Bicycle tyres/tubes to manufacture these tyres the appellant imported Carbon black and classified under

Tariff Heading No. 28030010 Customs Tariff Act. On which BCD, CVD and SAD have been but in terms of Notification No. 6/2010-Cus dated 28.01.2010 and Notification No. 4/2012 dated 05.10.2012, the goods are subject to Anti-dumping duty/safeguard duty but the appellant applied for advance license from the DGFT to avail exemption from import duties under chapter 4 of the foreign trade policy and against those licenses the appellant has imported the impugned goods which were exempt by the custom duty, additional duty/safeguard duty and anti-dumping duty leviable thereon under Sections 3, 8B and 9A of the Customs Tariff Act, 1975.

3. Revenue's of the view that these goods are not exempt from safeguard duty in terms of Section 8C of the Customs Tariff Act, 1975, therefore, these imported goods were subject to the proceedings for recovery of safeguard duty in terms of Section 8C of the Customs Act, 1975 and duty was confirmed against the appellant, against those orders, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that appellants are not liable to pay duty under Section 8C of the Customs Tariff Act, under the Foreign Trade Policy irrespective of the fact, whether the Notification No. 96/2009-Cus dated 11.09.2009 issued under Customs Act, specifies Section 8C or not? He also submitted that although

the issue has been dealt by the Hon'ble Bombay High Court in the case of Balkrishna Industries Ltd. Vs. UOI – 2016 (334) ELT 440 (Bom.) against the appellant but the said order has been stayed by the Hon'ble Apex Court. Therefore, the impugned orders are to be set aside.

5. Heard the parties, considering the fact that the said issue has been dealt by this Tribunal in the case of Metro Tyres vide Final order No. 62062-62063/2017 dated 31.10.2017 wherein this Tribunal has relied on the decision of Balkrishna Industries Ltd. (Supra) and has observed as under:-

"7. We find that the issue in question is no more res integra and stands settled by the Hon'ble Bombay High court in the case of Balkrishna Industries Ltd. Vs. UOI (supra) wherein it has been held that the safeguard duty imposed under Section 8C of the Customs Tariff Act, 1975, Vide Notification No. 4/2012-Cus is leviable, as the same is country specific, whereas the other two notifications are not country specific. In the said decision, before the Hon'ble Bombay High Court, the appellant imported Carbon Black from China against the advance authorization in terms of Notification No. 96/2006-Cus, which exempts the goods from payment of safeguard duty under Section 8B of the Customs Tariff Act. The Hon'ble High Court held that inasmuch as there is no exemption from safeguard duty leviable under Section 8C, which is imposed on the goods imported from China, the importer has to pay safeguard duty, in terms of Section 8C."

and thereafter this Tribunal come to the conclusion that the appellants are liable to pay duty in terms of Section 8C of the Customs Tariff Act, 1975.

6. The issue of whether reliance can be placed on the judgment of Balkrishna Industries Ltd. (Supra) in view of it being stayed by Hon'ble Apex Court was also examined by this Tribunal in the case of Metro Tyres (Supra), wherein the Revenue had relied on the judgment of Hon'ble Delhi High court in the case of M/s Space Telelink Ltd. Vs. CCE, Delhi-I CEAC No. 5 of 2016 dated 08.03.2017, this Tribunal held as below:

"8. On the issue of whether, in the event of above said judgment being stayed by the Hon'ble Supreme Court, reliance can be placed on it for deciding the issue, we find that as rightly pointed out by the Ld. AR, the Hon'ble Delhi High court, in similar situation wherein the judgment of the Hon'ble Gujarat High Court on the issue of Rule 8(A) had been stayed by the Hon'ble Supreme Court, held as below:-

"7. The revenue has argued that the Supreme Court has entertained a Special Leave petition against the judgment of the Gujarat and Madras High Courts and furthermore, granted a stay in proceedings and that in these circumstances, the law declared in those judgments are no longer applicable. This submission is fallacious because in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association (1992) 3 SCC, the Supreme Court has observed as follows:

"while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from

existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order dated January 7, 1991 and it cannot be said that after February 21, 1991 the appeal stood revived and was pending before the appellate authority."

8. It is apparent, therefore, that an order keeping in abeyance the judgment of a lower court or authority does not deface the underlying basis of the judgment itself, i.e. its reasoning.

9. In view of the above discussion, this court holds that the impugned order and reasoning of the CESTAT does not call for interference and the court is not persuaded to take a view different from those taken by the Gujarat, Allahabad, Punjab and Haryana and Madras High Court, respectively. The appeals are consequently dismissed."

Therefore, we hold that the ratio of Balkrishna Industries (Supra) can be applied to the present matter and hence, we hold that the issue at hand is covered by judgment of Hon'ble Bombay High Court.

7. In view of the above, we hold that the appellants are liable to pay duty in terms of Section 8C of the Customs Tariff Act 1975, therefore, we do not find any infirmity with the impugned orders, the same are upheld. In result, the appeals filed by the appellants are dismissed.

(Order dictated and pronounced in the open court)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash