IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3201 OF 1986

Cummins India Limited, formerly known as Kirloskar Cummins Ltd., a Public Limited concern, having its registered office at Kothrud, Pune-411 029. .... Petitioners

- Versus -

1. Union of India

2. Collector of Central Excise and Customs, Pune, P.M.C. Commercial Building, Tilak Road, Pune. .... Respondents

Mr. V.S. Nankani, Senior Counsel, with Mr. Ashish Rao, Mr. H.N. Vakil & Mr. Rushil Mathur i/by M/s. Mulla & Mulla & C.B. & Caroe for the Petitioners.

Ms P.S. Cardozo with Ms Ruju R. Thakker for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 19, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this writ petition under Article 226 of the

Constitution of India, the petitioners are seeking a writ of certiorari or any other appropriate writ, order or direction calling for the records relevant to the demand issued on them and in terms of the order, copy of which is at Exhibit-I to the writ petition.

2. The petitioners state that they have a valid licence required under the Central Excise Act, 1944. The petitioners are engaged in the manufacture of Internal Combustion (I.C.) Engines of various horse powers. They manufacture these I.C. Engines designed for use as prime movers for transport vehicles and those for stationery use. The special type of I.C. Engines manufactured were classified under Tariff Item No.29 of the First Schedule to the Central Excise Act, 1944.

3. The petitioners have stated as to how these Engines were supplied to M/s. Bharat Earth Movers, Bangalore and they filed a classification list. Then the Assistant Collector of Central Excise, Pune, by his order of 5-7-1966, classified these Engines for Dumper Application as falling under sub-item (1) of Tariff

Item No.29. Being aggrieved and dissatisfied with that order, the petitioners approached the Collector of Central Excise, in appeal. That appeal was dismissed on 29-9-1966. Thereafter, a revision application was filed with the Government of India. The revision application was allowed with consequential relief of refund of duty.

4. Thereafter, the classification list was approved and as set out in para 5 of this writ petition. The petitioners also obtained a refund. However, once again dispute was raised by the Department about the classification of these Engines. The issue was again taken up and in 1981, eventually, the Government of India accepted the version of the petitioners. These details are set out in para 6. In para 7, once again it is stated that the petitioners paid duty as per the approved classification list and the approved price list. Their monthly returns were assessed for the period February, 1985 to August, 1985. Respondents did not make any allegation with regard to any short levy of duty. However, on 18-11-1985 a show cause notice was received alleging that the petitioners have

contravened the provisions of the Act and the Rules in the manner stated in the show cause notice. The allegations are summed up in para 8 of the petition. Thereafter, the petitioners filed their reply. The petitioners were also served with the adjudication order impugned in this writ petition.

5. The argument of the petitioners is that the classification of their I.C. Engines for Dumper Application has been an issue consistently raised, but throughout the petitioners have succeeded in satisfying the Authorities that the attempt to classify them under a distinct special item cannot succeed.

6. In assailing the impugned order, it is submitted by Mr. Nankani, learned Senior Counsel appearing for the petitioners that there is total non-application of mind on the part of the Authorities and they could not have raised the same issues again and again. Once again the petitioners are sought to be proceeded again on the same cause of action.

7. On the other hand, learned Advocate Ms Cardozo,

appearing for the Revenue, would submit that it is incorrect to urge that this is a re-look at the same issue and on the same cause of action. It is submitted that Dumpers are motor-vehicles and the I.C. Engines cleared for fitment to Dumpers attract duty under Tariff Item No.29(i), yet, the petitioners insisted on sub-item (ii) and that is not correct. She invites our attention to the affidavit in reply.

8. Our attention has been fairly invited to a Judgment of the Hon'ble Supreme Court in the case of **Collector of Central Excise, Baroda Vs. Cotspun Limited**, reported in 1999 (113) E.L.T. 353 (S.C.). The Hon'ble Supreme Court held that the words “short levy” cannot be understood as meaning and covering the levy of excise duty on the basis of an approved classification list. Levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by issuance to the assessee a show cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such.

9. Then, it is held that differential duty cannot be recovered on the ground of short levy when the duty levied is on the basis of the approved classification list. It is submitted that in the latter Judgment of the Hon'ble Supreme Court in the case of **ITW Signode India Ltd. Vs. Collector of Central Excise**, reported in 2003 (153) E.L.T. 501 (S.C.), the argument before the Hon'ble Supreme Court was that Section 11A of the Central Excise Act, 1944 has been amended by Finance Act, 2000 with effect from 17-11-1980. That is made with a view to change the basis of the Judgment in **Cotspun Limited** (supra). It is in these circumstances that the earlier view was brought to the notice of the Bench dealing with the case of **ITW Signode India Ltd.** (supra). The matter was then referred to a Larger Bench. Then our attention is invited to the decision of the Larger Bench **{*2003 (158) E.L.T. 403 (S.C.), ITW Signode India Ltd. Vs. Collector of Central Excise*}** and it was held therein that Section 11A of the Central Excise Act, as amended by Section 110 of the Finance Act, 2000 making a provision for re-opening of the approved classification list is a valid piece of legislation.

10. In the light of the fact that there is now an authoritative pronouncement by the Hon'ble Supreme Court of India, we cannot sustain the challenge raised in this writ petition. The writ petition, therefore, fails and is dismissed.

11. Now, the amount demanded, namely, Rs.64,03,582.24 is already paid. There is no penalty imposed.

12. In the facts and circumstances of this case, Mr. Nankani has submitted that this Court should make an appropriate order protecting the petitioners as against the quantum of interest. He would submit that the amount of interest that the law would attract is in terms of Section 11AA of the Central Excise Act, 1944. That was substituted by Act 8 of 2011 in the original Sections 11AA and 11AB. It is submitted that in the facts peculiar to this case and having noted that the amount has been paid, there being a reference to a Larger Bench and that reference having been decided in the year 2003, and to be precise on 19-11-2003, the interest be scaled down from this date to 22-1-2004, i.e. the date of payment.

13. This request is opposed by the Counsel for the Revenue. We are of the view that in the light of the peculiar facts and circumstances, when the petitioners had succeeded throughout until the impugned adjudication order, the writ petition was pending in this Court for a considerable period, the amounts having been paid during the pendency and now the interest also secured from November, 2003 to January, 2004, no further recoveries be made in terms of the impugned order.

14. The writ petition is dismissed, subject to the above.

15. Rule is discharged. Interim relief stands vacated. No order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)