

[2019] 6 S.C.R. 938

A COMMISSIONER OF CENTRAL EXCISE AND  
CUSTOMS, BANGALORE  
V.  
M/S JSW STEEL LTD.  
B (FORMERLY KNOWN AS JINDAL VIJAYANAGAR  
STEEL LTD.)  
(Civil Appeal No.531 of 2008)  
APRIL 09, 2019

C      *Central Excise Act, 1944 – ss.4 and 11AB – Respondent manufactured Pig Iron and HR Coil Sheets, falling under Chapter 72, 1985 Act – While selling the goods, invoices were raised on the price of goods plus ‘Dharmada’, a charitable donation from customers, which was credited to charity – Show cause notice issued by the Deputy Commissioner, Central Excise and Customs, Bellary calling upon the Respondent to show cause as to why penalty u/r.25, 2002 Rules and interest u/s.11AB, 1944 Act be not levied – Deputy Commissioner held that the Dharmada is to be added to the assessable value for the payment of central excise duty – Commissioner (Appeals) confirmed the order – CESTAT set aside the order – On appeal, held: Present case has been tagged with M/s. D.J. Malpani vs. Commissioner of Central Excise, Nashik, [2019] 6 SCR 925 wherein it was held that the amount of Dharmada cannot be included in the transaction value for the purposes of assessments – In view of the said judgment, the present appeal is dismissed –*

F      *Central Excise Rules, 2002 – r.25 – Central Excise Tariff Act, 1985 – Chapter 72.*

#### **Dismissing the appeal, the Court**

G HELD: 1.1 The present case has been tagged with the case of *M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik* which was referred to this Bench vide order dated 29.07.2015. It was held that the amount of *Dharmada* cannot be included in the transaction value for the purposes of assessments. In view of the judgment in the case of Civil Appeal No. 5282 of 2005, M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik, the present appeal is dismissed. [Paras 5, 6][940-D-E]

COMMIR.. OF CENTRAL EXCISE AND CUSTOMS, 939  
BANGALORE v. M/S JSW STEEL LTD.

*M/s D.J. Malpani vs. Commissioner of Central Excise, A*  
*Nashik [2019] 6 SCR 925 – relied on.*

*Collector v. Panchmukhi Engineering Works (2003)*  
**(158) ELT 550 (SC) – referred to.**

<u>Case Law Reference</u>		
[2019] 6 SCR 925	relied on	Para 6
(2003) (158) ELT 550 (SC)	referred to	Para 4

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 531 of 2008.

From the Judgment and Order No. 440/2007 dated 04.4.2007 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal No. E/395/2005.

K. Radhakrishnan, S. K. Bagaria, Sr. Advs., Alok Yadav, K. Ajit Singh, Praveen Kumar, Ms. Nisha Bagchi, Ms. Aruna Gupta, B. Krishna Prasad, U. A. Rana, Himanshu Mehta,(for M/s. Gagrat and Co,) Advs. for the appearing parties.

The Judgment of the Court was delivered by

**S.A. BOBDE, J.** 1. The Revenue-Appellant has come in appeal against the order of the Central Excise and Service Tax Appellant Tribunal (for short “CESTAT”) dated 04.04.2007. The Respondent manufactured goods falling under Chapter 72 of The Central Excise Tariff Act, 1985. The Respondent manufactured Pig Iron and HR Coil Sheets. While selling the goods they raised invoices on the price of goods plus ‘Dharmada’ a charitable donation from customers. According to the Respondent, the Dharmada was meant for charity and was accordingly credited to charity.

2. However, show cause notice dated 19.03.2004 was issued by the office of the Deputy Commissioner of Central Excise and Customs, Bellary under Section 4 of the Act calling upon the Respondent to show cause as to why penalty under Rule 25 of Central Excise Rules, 2002 and interest under Section 11AB of the Central Excise Act, 1944 should not be levied. After hearing the Respondent, the Deputy Commissioner vide order dated 10.09.2004 held that the Dharmada is to be added to the assessable value for the payment of central excise duty.

3. Thereafter, in an appeal filed by the Respondent, the Commissioner (Appeals), confirmed the decision of the Deputy H

- A Commissioner and rejected the appeal and held that Dharmada should be added to the assessable value. Therefore, the goods were liable to be assessed on the basis of their price plus Dharmada.

The CESTAT in an appeal filed by the Respondent, by judgement dated 04.04.2007, allowed the appeal and set aside the order passed by

- B Commissioner (Appeals) dated 29.03.2005. The CESTAT purported to follow its judgment in the case of Mohan and Co., Madras vs. CCE Madras, which was affirmed by the Supreme Court in appeal, whereby this Court held that Dharmada was not liable to be added in the assessable value.

- C 4. Thereafter, in Civil Appeal No.531 of 2008 before this Court, it was contended by the Appellant before a Division Bench of this Court, that the decision in Collector vs. Panchmukhi Engineering Works<sup>1</sup> was to be followed. Thus, contending that Dharmada should be a part of the assessable value.

- D 5. The present case has been tagged with the case of M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik which has been referred to this Bench vide order dated 29.07.2015. We have held that the amount of Dharmada cannot be included in the transaction value for the purposes of assessments.

- E 6. In view of the judgment in the case of Civil Appeal No. 5282 of 2005, M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik, we hereby dismiss the present appeal.

Divya Pandey

Appeal dismissed.

<sup>1</sup>2003 (158) ELT 550 (SC)