

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.387-388 OF 2018

M/S AIRPORT RETAIL PVT LTD
(FORMERLY KNOWN AS ALPHA FUTURE
RETAIL PVT LTD)

APPELLANT(S)

VERSUS

THE COMMISSIONER OF CUSTOMS
EXCISE NEW DELHI (AIR CARGO EXPORTS)

RESPONDENT(S)

O R D E R

Heard learned counsel for the parties.

These appeals take exception to the common final order No. 56537-56538/2017 dated 12.09.2017 in Appeal No(s). C/4004/2012-Cus and C/59403/2013-CU passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.

When these appeals came up for admission on 25.01.2018, this Court after hearing the learned counsel for the appellant(s) issued limited notice on the question of penalty.

Learned counsel for the appellant(s) was at pains to persuade us to reopen the entire case and not limit to the issue of question of penalty. We are not impressed by

his persuasive argument in that regard. As the order issuing limited notice has been passed after hearing learned counsel for the appellant(s) and the appellant(s) having accepted that order, it is not open to make grievance in that regard at such belated stage. Even otherwise, we do not see any reason to re-examine the factual findings and the deviations recorded which reflect a clear infraction of statutory mandate.

We do not wish to dilate on that aspect any further. Accordingly, we would confine the discussion to the question of penalty only.

As regards penalty, there is lack of discussion and in-depth examination in light of the defence raised, *inter alia*, referring to worldwide operations and that the employees were working under supervision of the joint venture partner. Keeping in mind the statement made on affidavit that the appellant(s) has withdrawn from Indian market and have no active business operations in India anymore and that the appellant(s) have already deposited Rs.38 crores covering the principal amount and possibly the part of statutory interest component, we are inclined to set aside the order imposing penalty on the appellant(s) in the peculiar facts of the present case.

This order shall not be treated as precedent in any other case.

Accordingly, these appeals partly succeed and the order of penalty above is set aside.

We hereby clarify that the Department is free to recover the statutory interest component from the appellant(s), if there will be any deficit despite deposit of Rs.38 crores by the appellant(s). That demand shall be complied by the appellant(s) within the time frame specified in the demand notice issued by the Department.

Pending applications, if any, stand disposed of.

....., J.
(A.M. KHANWILKAR)

....., J.
(SANJIV KHANNA)

NEW DELHI;
August 24, 2021.

ITEM NO.11 Court 3 (Video Conferencing) SECTION XVII-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). 387-388/2018

M/S AIRPORT RETAIL PVT LTD
(FORMERLY KNOWN AS ALPHA FUTURE
RETAIL PVT LTD)

Appellant(s)

VERSUS

THE COMMISSIONER OF CUSTOMS EXCISE
NEW DELHI (AIR CARGO EXPORTS)

Respondent(s)

IA No. 10772/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 6850/2018 - STAY APPLICATION

Date : 24-08-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE SANJIV KHANNA

For Appellant(s) Mr. V. Raghuraman, Adv.
 Mr. Anand Sukumar, Adv.
 Mr. S. Sukumaran, Adv.
 Mr. Bhupesh Pathak, Adv.
 Ms. Meera Mathur, AOR

For Respondent(s) Mr. Vikramjit Banerji, ASG
 Mr. M.K.Maroria, AOR
 Mr. Shekhar Vyas, Adv.
 Ms. Rukmini Bobde, Adv.
 Mr. Sughosh Subramaniam, Adv.

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

The appeals are partly allowed in terms of the
signed order.

Pending applications shall stand disposed of.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)