
(2014) 07 AP CK 0078
In the Andhra Pradesh High Court
Case No : W.P. No. 7637 of 2001

A.C.C. Refractories Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Citation : (2015) 322 ELT 458

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Judgement

L.N. Reddy, J.

1. The petitioner is a manufacturer of refractory bricks, magnesite raming mass, magnesia carbon bricks etc. Raw material for the petitioner is "fused magnesia". Substantial quantity of raw material was being imported from Peoples Republic of China (for short "China"). The petitioner states that M/s. Birla Periclase, a division of Indian Rayon and Industry Limited, Visakhapatnam had a unit at Nagpur, which manufactures "sintered magnesia." That company is said to have complained to the Additional Secretary-cum-Designated Authority, Government of India, Ministry of Commerce, 2nd respondent herein alleging that the indiscriminate dumping of fused magnesia from China has adversely effected its activity and made a request to impose anti-dumping duty (for short "the duty"). Acting upon the said representation, respondents 1 and 2 are said to have imposed duty on fused magnesia imported from China. The petitioner challenges the steps taken by respondents 1 and 2 in imposing the duty. The petitioner further states that the Central Excise Board and Appellate Tribunal (CEBAT) has set aside the orders, through which duty was imposed and that the 2nd respondent has challenged the same by filing Civil Appeal before the Hon"ble Supreme Court. Their grievance is that since no stay was granted by the Hon"ble Supreme Court, the duty is being levied.

2. The respondents filed a counter affidavit, narrating the circumstances, under which the duty came to be imposed. It is stated that the representations made

by various organizations opposing such duty are under consideration.

3. It is no doubt competent for respondents 1 and 2 to choose the goods for levying the duty. The objective is to protect the domestic industry and supplies of raw-material. Much, however, depends upon the nature of the goods, which are chosen for this purpose.

4. During the pendency of the writ petition, an important development has taken place. While M/s. Birla Periclase complained about the dumping of the raw material from China, the petitioner and other industrial establishments, which were using that raw material, opposed the imposition of duty. The 2nd respondent has undertaken detailed exercise in this behalf and passed an order on 9-6-2013 duly referring to the contentions of various industrial establishments. Ultimately, he arrived at the following conclusions:

J. CONCLUSIONS:

11. The authority has, after considering the foregoing, come to the conclusions that:

(i) the decision leading to the closure of factory of M/s. Birla Periclase (which was manufacturing "sintered magnesia") was a result of other factors as well as that of Chinese dumping of the product.

(ii) Under the facts and circumstances of the case, the continuation of anti-dumping duty is not justified and the Authority recommends accordingly:

(iii) After careful consideration of the entire matter, the Authority recommends retrospective withdrawal of the anti-dumping duty on "Fused Magnesia" with effect from 1-10-1999.

5. From this, it becomes clear that the complaint of M/s. Birla Periclase, at whose instance the duty was imposed was not genuine and the losses suffered by it were on account of some other factors. A specific recommendation is made for withdrawal of the duty with retrospective effect. With that, the case of the petitioner becomes strengthened. It is not known as to whether any formal order has been issued to give effect to the order, dated 9-6-2003 passed by the 2nd respondent.

6. We therefore dispose of the writ petition, directing that-

(a) in case, the order, dated 9-6-2003 has been given effect to, in the formal manner, no duty shall be levied from the petitioner; and

(b) the petitioner as well as respondents 2 and 3 shall abide by the outcome of Civil Appeal Nos. 4936 and Designated Authority Vs. Indian Refractory Makers' Assn., . If the matter is still pending, the parties shall await the outcome of those appeals.

The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.