(1986) 08 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1583 of 1982

Acme Metal Industries Pvt. Ltd. APPELLANT

Vs

George Barla, Acce, Bombay RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11B

Citation : (1989) 19 ECR 31 : (1988) 38 ELT 270

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The dispute raised in this petition is about the correct classification of the articles manufactured by the petitioners. The petitioners are manufacturers of copper wire bars and wire rods and the petitioners claim the item is liable to payment of excise duty under Tariff Item 26A(1) or (1a) of the Central Excise Tariff. On the basis of this claim, the petitioners sought exemption under the Notification dated July 16, 1966. The petitioners accordingly filed a classification list before the Assistant Collector, but the claim was not accepted by the Assistant Collector, Central Excise, Bombay, by order dated August 10, 1979. The Assistant Collector held that the manufacture undertaken by the petitioner would fall under Tariff Item 26A(2) of the Central Excise Tariff. Against the order passed by the Assistant Collector, the petitioners preferred an appeal before the Collector of Central Excise (Appeals), Bombay.

2. During the pendency of the proceedings before the Assistant Collector and the appeal before the Collector of Central Excise, the petitioners had filed several refund applications on to basis of the classification list filed before the Assistant Collector. The appeal preferred by the petitioners was not decided for a considerable period, and therefore, the petitioners approached this Court by filing the present petition of October 5, 1981. During pendency of the petition, the Collector disposed of the appeal by order dated October 12, 1981 and the appeal was dismissed and the order passed by the Assistant Collector that the bars

manufactured by the petitioners are nothing but strips and hence excisable under Tariff Item 26A(2) was upheld. The petitioners thereupon amended the petition to challenge the order of the appellate authority.

3. Shri Sethna, learned counsel appearing on behalf of the Department, submitted that the proper remedy of the petitioner is to approach the Tribunal against the order passed by the Collector in appeals. Shri Sethna urged that the question of correct classification would depend upon appreciation of several facts and it would not be appropriate to examine this question in writ jurisdiction. Shri Bhandare, learned counsel appearing on behalf of the petitioners, stated that the petitioners would have no objection to approach the Tribunal situated at Delhi, but the appeal to the Tribunal would be barred by law of limitation. Sri Sethna submitted that the Department would not raise any objection on the ground of limitation provided the petitioners lodge the appeal during the period of six weeks from today. Shri Sethna assures that an application for condonation of delay would not be resisted and the department would join the petitioners in requesting the Tribunal to dispose of the appeal on merits. In view of the assurance given by Shri Sethna, there is no impediment in the way of the petitioners to file an appeal before the Tribunal.

The petitioners have also applied for refund of excess duty paid on the ground that the item is required to be correctly classified under Tariff Item 26A(1) or (1a). The question of refund cannot be decided at this juncture, because unless the petitioners succeed on the claim of proper classification of the articles, the right to demand refund will not arise ! It is made clear that in case the petitioners ultimately succeed in their claim of the correct classification, then it is open for the petitioners to file appropriate proceedings for refund in this Court.

4. Accordingly, petition is allowed to be withdrawn with liberty to the petitioners to file an appeal before the Tribunal at Delhi within a period of six weeks from today, and in case such an appeal is lodged, then the Tribunal will entertain the appeal on merits and dispose of the same in view of the statement of Shri Sethna that the respondents would not resist the appeal on the ground of limitation. There will be no order as to costs.