(1993) 12 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 616 of 1983

Ajay Woollen Mills APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-12-1993

Acts Referred:

Citation : (1993) 12 MAD CK 0010

Hon'ble Judges : S.P. Kurdukar, J;S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : Shri K.S. Cooper and Mr. D.D. Bodhanwala, for the Appellant; Shri H.V. Mehta and Shri M.I. Sethna, for the Respondent

Judgement

Kurdukar, J.—By this petition under Article 226 of the Constitution of India, the petitioners seek a Writ of Mandamus against the

Respondents, their officers, subordinates, servants and agents to forthwith release the imported goods of the petitioners viz. synthetic soft waste as

mentioned in the Bill of Entry without charging countervailing duty on all the consignments mentioned in the said Bill of Entry and further to release

in the same manner i.e. without charging countervailing duty the goods mentioned in the contract (Ex. B1 to B4) which are expected to arrive

shortly as well as future consignments of the same goods expected to arrive from time to time. Petitioners also seek a declaration that the synthetic

soft was the being imported by the petitioners from time to time are not liable to the levy of additional duty of customs i.e. countervailing duty as

these goods do not fall within any of the tariff items specified in the First Schedule of the Central Excises and Salt Act, 1944. By prayer (c), the

petitioners have sought interim reliefs, for clearance of the goods which was granted by this Court upon furnishing bank guarantee.

2. The 2nd petitioner is a proprietor of M/s. Ajay Woollen Mills, the 1st petitioner is carrying on business of manufacturing and export of acrylic

yarn and have been importing amongst other items large quantities of synthetic waste which falls under the Tariff Item No. 56.05/04 under Chapter

56 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as ''the Act''). According to the petitioners, they imported

synthetic wastes (acrylic wastes) which are of the type that are produced in the second stage i.e. when fibres are spun into spun staple yarn. Vide

Bill of Entry for home consumption (Ex. C), they imported consignments of synthetic wastes from Taiwan. According to the petitioners, since this

synthetic waste was covered by the Exemption Notification, they are not liable to pay any duty under the Central Excise Tariff Act. This

submission, however, did not press into service by Mr. Cooper and fairly, in view of the decision of the learned Single Judge in Writ Petition No.

180 of 1983 [R.K. Synthetics and Fibres Pvt. Ltd. Vs. Union of India, rendered on December 3, 1985. By this decision, it was held that synthetic

waste is dutiable and such goods fall under Item 68 of the Central Excise Tariff Act, 1983-84. It is common premise that this decision was upheld

by the Division Bench of this Court and the SLP filed by the Union of India also came to be dismissed. The result, therefore, is that the goods

imported by the petitioners which according to them is synthetic waste is leviable to duty under Item 68 of the Central Excise Tariff Act, 1983-84.

3. Mr. S.V. Singh, Assistant Collector of Customs filed the return on behalf of the Respondents. According to Mr. Singh, the imported goods

answers description given in Item 18IV of the Central Excise Tariff Act, 1983-84 and thus, the petitioners are liable to pay duty in terms thereof.

According to the respondents, the contention of the petitioners that the imported goods falls under Item 68 which is a residuary entry, cannot be

accepted. In support of this submission, Respondents relied upon three reports being Exhibits A, B and C annexed with the affidavit of Shri S.V.

Singh dated 13-6-1992. The 1st report (Ex. A) is dated 13-6-1984 submitted by the Deputy Chief Chemist. The 2nd report is (Ex. B) dated 15-

6-1984 submitted by the Deputy Chief Chemist and the third report is Ex. C dated 19th July 1984 submitted by Silk and Art Silk Mills Research

Association (SASMIRA). As far as first two reports are concerned, they do not refer to condition precedent namely man-made fibres which is necessary to levy customs duty under Item 18IV of the Central Excise Tariff Act, 1983-84. However, in the report dated 19th July 1984 at Exh.

C submitted by SASMIRA the last paragraph thereof reads as under :-

Hence from the nature of the sample and results obtained it was concluded that the submitted sample was synthetic fibre waste and the waste of

fibres has originated during man-made fibre manufacturing process.

Mr. Singh in his affidavit relied upon report of the SASMIRA and stated that the imported goods of the petitioners fall under Tariff Item 18-IV of

the Central Excise Tariff Act, 1983-84 and not under residuary Item 68.

4. Mr. Cooper, learned Counsel appearing for the petitioners, as stated earlier, fairly stated that the imported goods fall under residuary Item 68 of

the Central Excise Tariff Act, 1983-84 and the petitioners are liable to pay duty thereon accordingly.

5. Mr. Mehta, learned Counsel appearing for the respondents vehemently urged that the report of SASMIRA (Ex. C) clearly indicated that on

examination of sample sent to them it was noticed that waste of synthetic fibre has originated during man-made manufacturing process. In view of

this report of SASMIRA (Ex. C), the imported goods fall under Entry 18IV of the Central Excise Tariff Act, 1983-84 and accordingly petitioners

are liable to pay duty thereon. After going through these three reports carefully, we find that these sample reports are referable to Bill of Entry No.

2875. The Bill of Entry annexed to the petition is numbered as Rotation No. 2901/80. We repeatedly asked Mr. Mehta to indicate as to how the

report of SASMIRA (Ex. C) is referable to the Bill of Entry in question. Mr. Mehta was unable to connect the report of SASMIRA (Ex. C) to the

Bill of Entry of the petitioners. It is in these circumstances we are unable to accept the contention of the Respondents that the imported goods fall

under Item 18IV. Mr. Mehta tried to derive support from the other two reports wherein Bill of Entry No. is shown as 2875. Once it is held that

the Bill of Entry under which petitioners imported goods is not 2875, then no amount of certificates produced by the respondents will support their

contention. In these circumstances, we are unable to accept the contention of the Respondents that the imported goods fall under Item 18IV of the

Central Excise Tariff Act, 1983-84. If this be so, the respondents cannot levy duty in terms of Item 18IV.

6. In the result, petition partly succeeds and it is declared that the petitioners are liable to pay duty under Tariff Item 68 of the Central Excise Tariff

Act, 1983-84. Respondents are entitled to enforce the bank guarantee, which we are told, is alive as on today, and recover duty payable along

with 12% interest as per the interim order. If the petitioners pay the amount directly to the Department, then the bank guarantee will automatically

stand discharged. The duty is payable under Tariff Item 68.

7. Rule is made partly absolute in the above terms. In the circumstances of the case, there will be no order as to costs.