(1988) 08 CAL CK 0038

In the Calcutta High Court

Case No : C.R. No. 1901 (W) of 1984

Amani Udyog APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:
Customs Tariff Act, 1975 — Section 3

Citation : (1989) 19 ECC 207 : (1992) 61 ELT 439

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Arup K. Lahiri, for the Appellant; Stanley James and Sitaram Bhattacharya, for the Respondent

Judgement

Susanta Chatterjee, J.—The present Rule was issued on January 25,1984 and an interim order was passed to the extent.

"the petitioners besides payment of the customs duty will pay 50% of the additional customs duty before clearing the goods in question. The petitioners will further furnish security for the balance 50% of the additional duty to be assessed on the goods which have arrived at the Port of Calcutta on vessel ''Vishya Karuna''. In case the contentions made by the petitioners succeed, then they will get back the sum which they will deposit by way of additional customs duty with interest at 13% per annum. And in case the petitioners fail to succeed, then the Revenue will be at liberty to utilise the 50% of the additional customs duty deposited with them. The Customs authority will also be free to realise the balance 50% for which the Bank guarantee has been furnished in accordance with law."

2. The writ petitioners have prayed in the main writ petition for issuance of a writ of mandamus commanding the respondents not to levy and/or demand any additional duty of customs u/s 3 of the Customs Tariff Act in pursuance of the Notification No. 228/76-Cus., dated 2nd August, 1976, as amended in respect of the goods imported by the petitioners and directing the respondents to clear and/

or release the goods after realising the customs duty only.

3. It is the main contention of the writ petitioners that they have imported plastic film and such items are not covered by the notification in question and as such they are entitled to the benefits of exemption and are not liable to pay additional customs duty.

4. By referring to the notification it will appear from the Table appended thereto that the following items have been mentioned :-

"Tubes, rods, sheets, foils, sticks, other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible including layflat tubings and polyvinyl chloride sheets".

5. The question has arisen in the instant case as to whether the imported plastic films are to be construed as foils or otherwise to come within the mischief of the notification concerned or are to obtain exemption therefrom.

6. Having heard Mr. Lahiri, learned Advocate for the petitioners, and the learned Advocates for the Customs authorities and for the Port Trust authorities, it appears that there is a Test Report wherefrom the thinness of the item is apparent. As controversies have arisen whether by referring to Indian Standard Scale as claimed by the petitioners, the said item should not be deemed to be foil, whereas from the Test Report it appears that the thickness in millimeter can be equated with that of foil. Considering this aspect of the matter, it cannot be stated that the petitioners can escape the liability of payment of additional duty by giving any nomenclature, either plastic film or otherwise.

7. Considering the materials, this Court does not find that the petitioners have made out any case for exemption from additional customs duty.

8. There is no merit in the writ petition and the Rule is hence discharged. Interim order is vacated. Customs authorities are entitled to encash the bank guarantee in accordance with law.

9. With regard to the claim of the Port Trust Authorities, it is made clear that they are entitled to the rent in accordance with the scale of schedule of rates as prepared under the Major Port Trust Act.

10. There will be no order for costs.

