

(1993) 04 CAL CK 0060
In the Calcutta High Court
Case No : Matter No. 601 of 1993

Amar Steel Industries

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 16-04-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Customs Act, 1962 — Section 1, 2, 25
Customs Tariff Act, 1975 — Section 12, 2, 3

Citation : (1993) 67 ELT 44

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Dipankar Ghosh, Ashim Ghosh, Jatin Ghosh, Suhrit Ranjan Choudhury and Soumya Ghosh, for the Appellant; Asutosh Law and Samir Sen Gupta, for the Respondent

Judgement

Ruma Pal, J.—The relevant facts of this case have been set out in this Court's order dated 26th March, 1993 passed at the time of granting interim reliefs to the petitioners. The Court now is called upon to determine finally whether the petitioners are liable to pay additional duty in respect of the vessel brought in by them for breaking up. The petitioners have based their submission that no such additional duty is payable, on the language of the notification in question being Notification No. 74/93-Cus., dated 28-2-1993 and on the Notification No. 167/86-C.E., dated 1-3-1986 as amended, listed as General Exemption No. 41 to the Central Excise Tariff Act, 1985.

2. As far as the first ground is concerned the petitioners have reiterated their arguments made earlier. It has been submitted that the Notification No. 74/93 granted exemption to duties of customs specified in the First Schedule to the Customs Tariff Act, 1975 in respect of Ships imported for breaking. It is submitted that both the preconditions subject to which the benefit had been granted had been fulfilled namely, additional duty formed part of "duties of customs" and secondly additional duty was specified in the First Schedule. That

additional duty comes within the phrase "duty of customs" is, it is submitted, borne out by the decision in *Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others*, . The Finance Minister's speech was again referred to, to emphasise the fact that the object of the notification was to give relief to the ship breaking industry. It is also submitted that although Paragraph 82 of the Finance Minister's speech referred to the merger of auxiliary duty and basic duty, the word "merger" used in the Finance Minister's speech in Paragraph 91 should be construed as meaning merger between additional duty and basic duty as no auxiliary duty had been leviable in respect of ships brought in for breaking for several years. It is also contended that the Customs Authorities were wrongly seeking to rely on an earlier notification being Notification No. 142/87 dated 27-3-1987 which had been in force prior to Notification No. 74/93 which drew a distinction between "duties of Customs" and "additional duty". It is said that the earlier notification had been wholly superseded by Notification No. 74/93 and should be construed independently on the basis of the language used. It is said that reliance upon the earlier notification which had been superseded was inadmissible.

3. As far as the second condition is concerned it is submitted that the additional duty had been referred to in Annexure 1 to the First Schedule of the Customs Tariff Act, 1975. The annexure would therefore come clearly within the description of "the First Schedule". It was however, fairly pointed out to this Court that what was described as Annexure 1 in the copy of R.K. Jain's Customs Tariff of India 1993-94 did not find place in other publications of the Customs Tariff Act and its Schedule. An alternative argument was therefore made that the additional duty should be deemed to form part of the Schedule. It is submitted that the levy of additional duty was under Sections 1 and 2 of the Customs Act, 1962. Section 12 referred to the leviability of duties of Customs at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force. It is stated that the Supreme Court in *Khandelwal*'s case had held that additional duty was leviable u/s 12. There was as such no question of it being leviable under any other law. Section 12 read with Section 2 of the Customs Tariff Act, 1975 would show that the levy of additional duty could only be under the First Schedule to the Tariff Act, 1975.

4. The third and final contention of the petitioners is based on Section 3 of the Customs Tariff Act, 1975 which provides that additional duty shall be levied at rates "equal to the Excise Duty for the time being leviable on a like Article". The general Exemption No. 41 under the Central Excise Tariff Act, 1985 had been issued under Rule 8, sub-rule (1) of the Central Excise Rules, 1944 and had totally exempted from Excise Duties all goods falling within inter alia Chapter 89 of the Schedule to the Central Excise Tariff Act. The Central Excise Tariff Schedule and the Customs Tariff Schedule were identical in that both have used identical Tariff Headings and descriptions. Chapter 89 in both Central Excise Tariff Schedule and in the Customs Tariff Schedule were identical. Chapter 89 of the Central Excise Tariff Schedule included vessels brought in for breaking. The rate

of Excise Duty leviable in respect of vessels brought in for breaking being nil, the rate of additional duty must also be nil.

5. The respondents have also contended that for construing Notification 74/93 the Finance Minister's speech would have to be looked into. Emphasis was laid on the fact that Paragraph 82 of the Budget speech referred to merger between basic Customs duty and auxiliary duty. It is submitted that the use of the word "merge" in Paragraph 91 clearly therefore connoted merger between basic Customs Duty and auxiliary duty. It was then contended that by the earlier notification being Notification No. 142 of 1982 dated 27th March, 1987 exemption had been granted u/s 25 of the Customs Act in respect of duties of Customs and Additional Duties. Separate provision had been made for both. This would show that duties of Customs did not include additional duty. It is submitted that the notification in question did not supersede the earlier notification dated 27-3-1987 totally but only over-rode the earlier notification in so far as it was inconsistent with the new notification. It is pointed out that the earlier notification had not been challenged. It is further submitted that an additional duty was by its very nature not Customs Duty because it was imposed only for the purpose of obtaining revenue which the Government otherwise would have earned had the goods in question been manufactured in India.

6. It is then contended that the Supreme Court's decision in Khandelwal's was not applicable as the Supreme Court did not have to consider the peculiar facts present in this case.

7. As far as the last contention of the petitioners was concerned, no effective submission could be made by the respondents although they were put on notice as far back as on 12th April, 1993 that the General Exemption Notification No. 41 would be relied upon at the time of hearing.

8. In my view, it is not necessary for the Court to determine the various arguments raised by either side on the construction of Notification No. 74/93. I rest my decision on the construction of Notification No. 167/86-C.E., dated 1-3-1986 (as amended) and Section 3 of the Customs Tariff Act, 1975. Notification No. 167/86 listed as General Exemption No. 41 to the Central Excise Tariff Act, 1985 reads as follows :

"Exemption to specified goods produced without the aid of power and falling under chapters 14,30,32, 33,36,46,51, 62, 69, 71,83, 89,92 and 85. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in column (2) of the Table hereto annexed and falling under Schedule to the Central Excise Tariff Act ,1985 (5 of 1986) from the whole of the duty of excise leviable thereon which is specified in the said Schedule :

Provided that no process in or in relation to the manufacture of the said goods is ordinarily carried on with the aid of power :

Provided further that the exemption contained in this notification shall not apply to sandalwood oil."

THE TABLE

Sl. No. Description of goods (1) (2) 1. All goods falling within Chapters 14, 71, 89 & 92.

9. Chapter 89 of the Central Excise Tariff Act like the Customs Tariff Act deals with Ships, Boats and Floating Structures. Tariff Heading 89.08 relates to "Vessels and other floating structures for breaking up". The language is identical with the Tariff Heading 89.08 in the Customs Tariff Act.

10. Section 3 of the Customs Tariff Act, 1975 reads as follows :-

"Section 3. Levy of additional duty equal to excise duty. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation - In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India, means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty."

11. The rate of Additional Duty is, therefore, directly linked with the rate of Excise Duty. The rate of Excise duty in respect of Tariff Item No. 89.08 under the Central Excise Tariff being nil by virtue of Notification No. 167/86-C.E., dated 1-3-1986 the rate of Additional Duty in respect of Tariff Item 89.08 under the Customs Tariff Act must also be nil.

12. The requirement under Notification No. 167/86 that no power should be used in the process or in relation to the manufacture of the goods could, in the context of the language of Tariff Heading 89.08 mean the scrap produced by the breaking of the vessel. The writ petition contains a categorical averment that no power is used in the breaking up of the vessel. This has not been deceived by the respondents.

13. In that view of the matter, the writ application must be allowed. The Order of Assessment dated 19th March, 1993 in so far as it relates to imposition of Additional Duty of Customs in respect of the vessel in question, namely, N.V. AIZKRAUKLE, is set aside. On the petitioners paying the Duty on the basis of the Notification No. 74/93-Cus., dated 28-2-1993, that is, 5% ad valorem, the

petitioners may dismantle and clear the dismantled parts of the said vessel.

14. In the event the petitioners have already paid the amount of 5% ad valorem the Bank Guarantee subject to which the interim order had been granted will stand discharged.

15. Let the notice dated 12th April, 1993 given by the Advocate-on-Record for the petitioners to the Senior Central Government Advocate, be kept on the record of this case.

16. There will be no order as to costs.

17. The learned Counsel appearing for the respondents prays for stay of operation of this judgment and Order. Such prayer is allowed. There will be a stay of operation of this Judgment and Order for a period of 2 weeks from date.

18. All parties concerned are to act on a signed copy of the operative portion of this judgment and Order on the usual undertaking.