
(2002) 08 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Special Appeal No. 101 of 1996

Amrit Nahta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Customs Act, 1962 — Section 12, 25(2)

Citation : (2003) 152 ELT 301 : (2004) 1 RLW 573 : (2003) 1 WLC 31

Hon'ble Judges : Rajesh Balia, J;D.N. Joshi, J

Bench : Division Bench

Advocate : M. Mridul, assisted by Gajendra Maheshwari, for the Appellant;
Pankaj Bohara, for Ravi Bhansali, for the Respondent

Judgement

Rajesh Balia, J.—This Special Appeal is filed against the judgment of learned Single Judge dated 12th Sept., 1995 by which the writ petition filed by the original petitioner, whose legal representatives are the present appellants, was dismissed.

2. The facts, relevant for the present purposes, are that on 20th July, 1982 the Central Govt. in exercise of its powers u/s 25 of the Customs Act, 1962 had notified certain exemptions/concessions in Custom Duty payable on import of motor vehicle by a handicapped person which has been specially adapted for his use, in pursuance of which the petitioner made an application for grant of exemption certificate before the competent authority on 19/20th Oct., 1982. According to the petitioner, his left arm was permanently disabled having suffered paralysis. On 9-12-82, a query was directed to the petitioner concerning his income, which was replied on 18-12-82, however the application was returned vide letter dated 31-5-1983 with an advise to apply afresh in pursuance of the new exemption scheme announced by the Govt. of India, referred to in the petition as the second scheme. The petitioner having come to know that in like circumstances High Court of Delhi has directed and the Central Govt. has agreed to consider the applications, which have been received by it on

or before 28th Dec., 1982, and the petitioner falling in the same category also filed this writ petition before this Court.

3. It appears, meanwhile the second scheme has also lapsed and the third scheme came into being through the Export-Import policy for the year 1984-85 which according to the petitioner was more liberal than the first scheme so far as identifying disability was concerned. The second scheme has confined the exemption to the car having value not exceeding Rs. 65,000/- and capacity not exceeding 1000 C.C. The petitioner, however, submitted an application under Import & Export Policy 1984-85 on 12th July, 1984. Before the application could be decided, fourth scheme was published on 7-1-85, under which the capacity of the car, which could be imported by a disabled importer, was increased to 2000 CC, and finally on 24th May, 1985 the petitioner was issued licence to import Isuzu Aska 2000 CC Diesel Car fitted with disability gadgets and the petitioner availed the import as per said licence in 1985.

4. This petition has been filed inter alia on the ground that had the petitioner's application under the first scheme or the second scheme was considered or allowed, he could have availed the benefit of concession but he has wrongfully been deprived of such concession by default of the respondents to consider his application.

5. The representation of the petitioner to allow him concession on the import of car in pursuance of the licence issued on 24th April, 1985, as was available under the first scheme, was rejected by the Finance Ministry on 20th Sept., 1985.

6. The relief claimed by the petitioner is to seek a mandamus to the respondents to consider the application of the petitioner dated 19/20th Oct., 1982 and his application dated 12th July, 1984 on merit and to treat the import licence to the petitioner as having been issued under the first scheme, and/or in the second scheme by issuing the writ of mandamus. Consequently, a claim of refund of 50% of customs duty paid by him ad valorem is also made.

7. Learned Single Judge has not found merit in this petition and has rejected the writ petition.

8. Learned counsel for the appellants has contended in the first instance that petitioner is entitled to be treated at par with all those persons who had applied prior to 28th Dec., 1982 to avail benefit of the first scheme of concession to disabled persons on import of a motor vehicle adapted for use by disabled person, as have been availed by persons in pursuance of directions issued by Delhi High Court on more than one occasion. The Central Govt. itself has decided to consider all applications under the first scheme as were pending on 28th Dec., 1982. Reliance has been placed on the decisions of Delhi High Court in S.P. Gupta etc. Vs. Union of India, M.S. Baid v. Union of India (Civil Writ Petition No. 1178/84, decided on 23rd August, 1985), and Sh. Krishan Kumar v. Union of India and Anr. (Writ Petition No. 774 of 1984, decided on 17th May, 1984).

9. All the three decisions are founded on the premise that concession which was notified by issuing a public notice on 20th July, 1982 could be withdrawn only by another notification of rescission and not by decision on files by the Ministers. Therefore, notwithstanding that the Finance Minister has taken the decision on file on 23rd Dec., 1982 to discontinue with the scheme but was actually rescinded only in May, 1983, the applications which were pending on 23rd Dec., 82 could not be denied consideration for that reason alone, and therefore, the directions were issued.

10. However, we are of the opinion that the question of considering the case of the petitioner for grant of exemption under 1982-83 scheme cannot arise. u/s 12 of the Customs Act, the Custom Duty is leviable on goods imported into or exported from India. The taxing event which attracts the provisions relating to charge of custom duty and consequentially the provisions of exemption from charging of custom duty also only when the taxing event takes place, which in the present case is import of the car into India in 1985. The relevant date for considering rate of custom duty chargeable and exemption, if any, from such charge is the date on which the car reached Indian Territorial Waters. Law existing on such date only is relevant. As no car was imported in India during the currency of the scheme of exemption notified on 20th July, 1982, even if the application is considered, the exemption cannot be extended to the date when the taxing event took place, when no such exemption was otherwise applicable. The law of charge-ability as well as taxability, which governs the levy of custom duty is the one, which is in force at the time goods are imported into India and not any law which was in force anterior thereto. In the present case, the facts are undisputed that the import licence was granted to the petitioner only on 24th May, 1985 and the goods have been imported thereafter. Therefore, the law prevalent in 1982-83 in no case can govern the question of levy and exemption of duty on such import.

11. We are, therefore, of the opinion that issuing now a direction to consider the application under the Scheme of 1982-83 would be a futile exercise inasmuch as even if the application is considered to be validly made and is granted, the exemption cannot be extended to a taxing event which has not taken place during the currency of the exemption notification in question.

12. We may notice, in this connection, a decision of Kerala High Court in *Shri Ramlinga Mills Private Ltd. and Others Vs. Assistant Collector of Customs and Another*, - 1983 Taxation Law Reports 2724] in which the importer claimed exemption under a notification which was in force when the vessels had entered the territorial waters of India but by the time it reached the Port of destination that is to say the Port of Cochin, the exemption notification was dead. The Court declined to issue a mandamus for availing exemption under the notification which was not in force at the time when the event which attracted chargeability to tax had taken place. The exemption was claimed on the basis of making an order in anticipation of exemption as was prevalent when order was placed and its entry

into territorial waters.

13. Similar view was expressed by Madras High Court in Assistant Collector of Customs (Imports) Vs. Sundaram Textiles, wherein the Court held that the relevant date for exemption from customs duty is the date of unloading.

14. Even assuming and not going thus far that the taxing event occurs only at the time when the goods reaches the port of destination but the taxing event occurs when the goods reaches the territorial waters of India, in the present case it would be doubted that the taxing event has taken place only after 24-5-85. On that date, the exemption notification dated 20th July, 1982 was not in force. In these circumstances, in our opinion, the petition must fail and accordingly appeal must also fail.

15. Learned counsel then contended that if the petitioner is not entitled to benefit of the Scheme informed on 20th July, 1982, at least his case is liable to be considered u/s 25(2) of the Custom Act for grant of exemption keeping in view the special facts and circumstances of the case. In the facts and circumstances of the present case, we are not inclined to grant this prayer. The goods have been imported long back in 1985, the person for whose benefit the concession was granted is no more alive and more importantly the provisions of Section 25(2) can only be invoked in public interest and not to grant benefit to a particular person alone.

16. We are further informed that the petitioner has paid 50% of the custom duty payable on the import of the car in question and the balance amount has not been paid to the Revenue as a result of interim order passed by this Court but the amount has been deposited in the fixed deposit as per the directions of the Court. The entire amount which is standing to the credit of the petitioner's account under the directions of this Court, shall be paid to the respondents within a period of two months in full and final discharge of the liability towards custom duty.

No orders as to costs.