(1991) 09 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 972 of 1982 with other companion petitions (in all 85 matters)

Arat Electro Chemicals Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:
Customs Act, 1962 — Section 12

Citation : (1992) 1 BomCR 710 : (1991) ECR 490 : (1992) 58 ELT 186 : (1993) 1 MhLj 269

Hon'ble Judges : Sujata V. Manohar, J;P.S. Patankar, J

Bench : Division Bench

Advocate : Mr. V.N. Deshpande, Mr. M.L. Bansal, Mr. K.P. Dhanuka. Mr. J.P. Deodha, Mr. J.Y. Singhania, Mr. S.V. Kamdar, Mr. R.K. Maheshwari and Mrs. Zis Mody, instructed by M/s Gagrat and Co, for the Appellant; Mr. D.H. Mehta, Mr. H.V. Mehta, Mr. V.G. Rege and Mr. K.C. Sidhwa, for the Respondent

Judgement

Sujata Manohar, J.—These writ petitions relate to import of zinc ash. The petitioners in these petitions have imported zinc ash after March 1981 at various times as set out in each of the petitions. They have challenged in these petitions the levy of additional customs duty on zinc ash u/s 3(1) of the Customs Tariff Act, 1975.

2. u/s 12 of the Customs Act, 1962, duties of customs shall be levied at such rates as they may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from, India. u/s 3(1) of the Customs Tariff Act, 1975, 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 to Section 3(1) of the Customs Tariff

Act, 1975 is as under :

"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 liable at different rates, the highest duty."

3. In the present case, the respondents have sought to levy additional customs duty u/s 3(1) of the Customs Tariff Act, 1975 on zinc ash imported into India. Since the additional customs duty is leviable at the rate at which excise duty would be levied on the article if produced or manufactured in India, it is necessary to turn to the Central Excise Tariff. Item No. 26B of the Central Excise Tariff, as from 1st March 1981, is as follows :

"Zinc Rate of duty 1. Unwrought, including ingots, cakes, bars, Rs. 2,625/- per MT block, hard or soft slabs, billets, plates, cathodes, anodes, pellets, spelter and broken zinc. 1(a) Waste and Scrap Rs. 2,625/- per MT 2. Manufactures, the following, namely, Rs. 3,150/- per MT plates, sheets, circles, strips and foils in any form or size. 2(a). Calots Rs. 4,100/- per MT. 3. Pipes & Tubes 35% ad valorem.

Explanation I. - ''Zinc'' shall include any alloy in which zinc predominates by weight over each of the other metals.

Explanation II. - ''Waste and Scrap'' means waste and scrap of zinc fit only for the recovery of metals or for use in the manufacture of chemicals and includes dross and ash."

Item (1a) of Tariff Item No. 26B levies excise duty at the rate of Rs. 2,625/- per metric tonne on waste and scrap. Explanation II to Item No. 26B makes it clear that waste and scrap includes dross and ash. It also clarifies that this entry refers to waste and scrap of zinc fit only for the recovery of metals or for use in the manufacture of chemicals. It is an accepted position that zinc ash imported by the petitioners is used for recovery of metals and may also be used in the manufacture of chemicals. Therefore, this zinc ash is clearly covered under the Tariff Item No. 26B(1a). Additional duty would, therefore, be leviable on zinc ash imported into India at the rate at which excise duty is levied on zinc ash under the Central Excise Tariff Item No. 26B(1a).

4. It is, however, submitted by Mr. Deodhar, learned Counsel appearing for some of the petitioners, that Tariff Item No. 26B has to be interpreted the context of the legislative history pertaining to this tariff item.

5. Tariff Item No. 26B, as on 1-3-1961, was as follows :

"Zinc Rate of duty 1. Manufactures, the following, namely Rs. 300.00 per MT plates, sheets, circles, strips & foils in any form or size. 2. Pipes & Tubes 10% ad valorem."

At that stage there was no reference to zinc ash in the Tariff Item No. 26B. This item, however, was amended with effect from 20th August, 1965. This amended Tariff Item No. 26B was as follows :

"Zinc Rate of duty 1. Unwrought, including ingots, cakes, Rs. 500/- per MT bars, blocks, hard or soft slabs, billets, plates, cathodes, anodes, pellets, spelter, dross, ashes and broken zinc.

6. As from 1-3-1981 there has been a substantial change in the Tariff Item No. 26B. Zinc ash along with dross have been removed from the Tariff Item No. 26B(1) which deals with unwrought zinc. A separate category (1a) dealing with waste and scrap has been added. Explanation II to this tariff item now makes it clear that ash and dross are included in the Tariff Item No. 26B(1a).

7. It is urged by Mr. Deodhar that the amendment in Tariff Item No. 26B as from 1-3-1981 does not bring about any change in the existing position relating to the excise duty leviable on zinc ash. The change merely obviates the controversy as to the classification of zinc ash and makes it clear that zinc ash would fall under Item 26B and not under Item 68. Mr. Deodhar relies in this connection on the portion of the Statement of Objects and Reasons relating to this tariff item in the Finance Bill for the year 1981. He also relies on the speech made in the Parliament at that time by the Finance Minister. He submits that in this light, Tariff Item No. 26B(1a) should be interpreted to include only zinc ash produced in the course of smelting operations. Zinc ash, which is produced otherwise than in the course of smelting operation, must be considered as exempt from the levy of excise duty.

8. This submission, in our view, cannot be accepted. In the first place Tariff Item No. 26B as it stands after 1-3-1981 must be interpreted on the basis of the language used. If the language is clear and unambiguous, it is not open to interpret the entry by resorting to the Statement of Objects and Reasons or to the speech made by Finance Minister in Parliament. In any event, these merely indicate the circumstances which led to the enactment of the new Tariff Item 26B(1a). In our view, Tariff Item No. 26B(1a), when read with Explanation II, is clear and unambiguous. It clearly covers within its scope all kinds of zinc ash. The clear words in this tariff item cannot be read down by resorting to legislative history or the Statement of Objects and Reasons or the speech of the Finance Minister in Parliament. There is no warrant for construing Tariff Item 26B(1a) as covering only zinc ash resulting from smelting operations.

9. As set out by Justice G. P. Singh in the Principles of Statutory Interpretation 4th edition page 150, "Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute was sought to remedy. But when a clear expression is given to the

intention of the legislature in any of the statutes resort to this external aid becomes unnecessary."

10. We may also point out that the speech of the Finance Minister in Parliament while dealing with this amendment in the Finance Bill of 1981 was merely this :

"... There has been considerable debate and dispute on the question of assessment of waste and scrap of these metals. To set these at rest it is proposed to specifically cover waste and scrap of these metals under the respective tariff entries."

This statement does not support the contention advanced by Mr. Deodhar that only a certain kind of zinc ash was sought to be covered by Tariff Item No. 26B(1a). In the Statement of Objects and Reasons pertaining to this item, it is stated -

"The scope of the term ''waste and scrap'' is being clearly defined; zinc dross and ash are being included in waste and scrap."

This also does not throw any light on the question whether only zinc ash resulting from smelting operations is covered by Tariff Item No. 26B(1a). Hence, even if we resort to these external aids, these do not support Mr. Deodhar''s contention.

11. It is true that prior to 1-3-1981 there was a controversy as to whether only zinc ash from smelting operation was covered under Tariff Item No. 26B(1) as it then stood, or not. But we do not see why that controversy should be imported into the amended Tariff Item No. 26B after 1-3-1981.

12. Under an excise Notification No. 104/73-C.E., dated 21st April 1973, and exemption was granted to zinc dross and zinc ash arising in the course of zinc smelting operations in zinc smelters from the whole of the duty of excise leviable thereon. The notification states -

".... the Central Government hereby exempts such zinc dross and zinc ashes, falling under sub-item (1) of Item 26B of First Schedule to Central Excises and Salt Act, 1944 as are arising in the course of zinc smelting operations in zinc smelters, from the whole of the duty of excise leviable thereon."

This exemption notification has also been amended along with the amendment to Tariff Item No. 26B by a Notification No. 32/81-C.E., dated 1-3-1981. As a result zinc dross and zinc ashes falling under sub-item (1a) of Tariff Item No. 26B, as are arising in the course of zinc smelting operations, are exempted from the whole of the duty of excise leviable thereon. Hence, at all material times, zinc dross and zinc ashes, arising as a result of zinc smelting operations, have been exempt from payment of excise duty. By virtue of this notification, similar zinc ash produced from zinc smelting operations, when imported into India, would also be exempted from the payment of additional customs duty u/s 3(1) of the Customs Tariff Act, 1975. It is, however, for the petitioners to establish that zinc ash, which is imported by them in zinc ash arising in the course of zinc smelting operations in zinc smelters. If they satisfy this requirement of the exemption notification, the benefit of such exemption should be extended to zinc ash imported into India. But in the absence of any material to this effect, the petitioners would not be entitled to this benefit.

13. It was urged before us by some of the petitioners that zinc ash which arises from galvanising operations must also be considered as exempt from payment of excise duty because galvanising operation cannot be termed as a manufacturing process. In support, these petitioners relied upon the decision in the case of Gujarat Steel Tubes Ltd. etc. Vs. State of Kerela and others, , where the Supreme Court dealt with the galvanising of steel tubes and pipes. It held that this is only a processing operation and not manufacture as the goods still remain tubes and pipes. In our view, this judgment is of no assistance to the petitioners, because we are not here concerned with the process of galvanising. We are here concerned with zinc ash which is produced in the course of galvanising operation. This is undoubtedly a different product and it is expressly subjected to excise duty under Tariff item No. 26B(1a). As set out in the case of Khandelwal Metal & Engineering Works v. Union of India 1985 (20) ELT 22, scrap is a by-product which comes into existence in the course of some other process. It is a distinct excisable commodity. Once it is established that excise duty is leviable on a commodity if produced or manufactured in India, a corresponding additional customs duty is leviable on a similar commodity when imported into India u/s 3(1) of the Customs Tariff Act, 1975. It was also urged before us that in fact no excise duty is levied on zinc ash produced in India in the course of galvanising operations. We do not have any material before us in support of this contention. In any case under T.I. No. 26B(1a) excise duty is leviable on such zinc ash.

14. In the premises, the petitions before us, which challenge the levy of such additional Customs Duty on zinc ash, must fail. Rule is accordingly discharged in each of these petitions which no order as to costs. The respondents are thereupon entitled to encash the bank guarantees furnished by the petitioners under the various interim orders herein. But the same shall be done as set out hereinafter.

15. If, in a given case, any of the petitioners are able to establish before the Customs Authorities that the zinc ash imported by them is produced in the course of smelting operation in zinc smelters, such petitioners will be entitled to claim exemption from the additional customs duty in view of the Notification No. 104 of 1973, as amended on 1st March 1981. The benefit of such exemption may be claimed by the concerned petitioners within three months from today. Their application shall be accompanied by evidence in support of their claim. The same to be decided by the respondents within three months thereafter. Whenever such a claim is made by any of the petitioners, the bank guarantees submitted by them under interim orders shall be kept alive till the disposal of their application for exemption and the same shall not be encashed by the respondents until the

disposal of their application.

16. On the expiry of a period of three months from today, during which period the petitioners shall keep their bank guarantees alive, the respondents will be at liberty to encash the bank guarantees issued in their favour pursuant to the interim orders passed in each of these petitions for the purpose of recovering the quantum of additional customs duty payable on zinc ash imported by the petitioners, provided the petitioners concerned have not filed any claim for exemption on the basis of the said exemption notification regarding zinc ash produced as a result of smelting operations.

17. In cases where the petitioners have deposited the amount of additional duty in Court instead of furnishing bank guarantees and/or bonds, the respondents will be at liberty to withdraw, from the amounts so deposited, the amount of the additional customs duty payable by the petitioners in respect of zinc ash imported by them on the expiry of three months from today or after the disposal of their application for exemption, whichever is later. The balance amount, if any, to be returned to the petitioners concerned.

18. On the application of the petitioners, the operation of this order is stayed for a period of eight weeks from today.

19. Certified copy expedited.