
(1986) 04 CAL CK 0046
In the Calcutta High Court
Case No : Matter No. 199 of 1984

Ballarpur Industries Ltd.

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 18-04-1986

Acts Referred:

Customs Act, 1962 — Section 15, 46, 59(1)
Finance Act, 1982 — Section 44(1)

Citation : (1987) 30 ELT 195

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Judgement

Padma Khastgir, J.—The petitioner carries on business of the import of brass scraps in the state of Maharashtra. Such brass scraps imported by the petitioners have various trade names "Honey", "Abony", "Pales" and various other names. The customs duty under the provisions of the Customs Act, 1962 is leviable on import of brass scrap at such rate as may be specified in the Customs Tariff Act.

2. Chapter 74 of the First Schedule to the Tariff Act provides for rates of duty on import of copper and other articles thereof. It was contended by the petitioner that the Brass Scrap imported by them is master alloy and is covered by Heading No. 74.01/02 of Chapter 74 of the First Schedule.

3. The petitioner entered into a contract on 15th of February, 1982 with Phibro Asia Ltd. of America to buy approximately 60 short tons of Brass Scrap confirming two Nari Specification Abony at 72 U.S. Cents per pound C.I.F. Calcutta. Pursuant to the said contracts the goods arrived at Calcutta on board the Vessel "Tulsidas". The goods arrived in lots and under different bills of lading. On 27th February, 1982 the petitioner entered into another contract with Phibro Asia Ltd. to buy approximately 108 mt. tonnes of brass scrap conforming of Nari Specification Honey at 52 U.S. Cents per pound C.I.F. Calcutta. Pursuant to that contract those goods arrived at Calcutta on board the Ship "Biswa parimal". The said goods arrived in lots under different bills of lading. The petitioner wishes to

clear the said goods for home consumption in respect of one lot of goods. The customs authorities made assessment on the said bill of entry according to the petitioner illegally by leaving auxiliary duty at the rate of 35% ad valorem. Although according to the petitioner Section 44, Sub-section (1) of the Finance Act, 1982 provides that in case of goods mentioned in the First Schedule as amended from time to time there shall be levied and collected as auxiliary duty of customs equal to 30% of the value of the goods as determined in accordance with the provisions of the Customs Act whereas the Customs authorities had levied an auxiliary duty of 35% on the brass scrap imported by petitioner. Hence, the petitioner contended that such levy was unlawful and not in accordance with law. By notification dated 28th February, 1982 bearing No. 60/82 as amended by notification dated 1st March, 1982 bearing No. 79/82 the Central Government exempted the goods which are partially or wholly exempt from the duty of customs specified in the First Schedule to the Customs Tariff Act, 1975 by virtue of notification of the Government of India, Ministry of Finance or the Department of Revenue and Banking from the whole of the auxiliary duty of customs leviable on such goods under Sub-section (1) of Section 44 of the Finance Act, 1982. Hence, the petitioner contended that the goods so imported by, the petitioner will exempt from the whole of the auxiliary duty of customs leviable on such goods under Sub-section (1) of Section 44 of the Finance Bill 1982.

4. By notification dated 11th May 1982, bearing No. 136 as amended by notification dated 14th May 1982, Notification dated 26th May, 1982 and Notification bearing No. 174 dated 28th June, 1982 and 22nd July, 1982 Customs Notification dated 28th February, 1982 bearing No. 60/82 was superseded and the Central Govt. exempted goods which were partially or wholly exempt from the duty of customs specified in the First Schedule to the Customs Tariff Act, and by virtue of Notification of the Government of India the whole of the auxiliary duty of customs leviable on such goods under Sub-section (1) of Section 44 of the Finance Act of 1982. The petitioner contended that the brass scrap so imported by the petitioner fell within Serial No. 109 which had been exempted from whole of the auxiliary duty of customs. By notification dated 16th November 1982, bearing No. 254/82 the Central Government amended notification dated 11th May 1982, bearing No. 136/82 to the effect that in the Schedule to the said notification Serial No. 109 and 219 and the entries relating thereto shall be omitted. The effect of the said notification was that exemption granted by the Notification No. 136 dated 11th May, 1982 was withdrawn being effective from 16th November, 1982. The petitioner craved reference to a judgment of the Bombay High Court reported in 1981 Tax Law Reports 2763 and the judgment of the Division Bench of the Bombay High Court in M.S. Sahani v. Sylvania and Luxman reported in 77 Bombay Law Reporter 380 and submitted that the benefit of an exemption notification is available on an importer if the notification is in operation when the goods crossed the customs barrier and entered the territorial waters of India. Even though the period of notification had come to an end when the goods were cleared from the warehouse. The brass scrap imported by the

petitioner had entered the customs barrier and had entered the territorial waters of India during the subsistence of the notification bearing No. 136/82, dated 11th May, 1982 and before 16th November, 1982 which would be evident from the bill of entry for warehousing the said goods. Hence, the petitioner was entitled to the exemption granted under the notification dated 11th May 1982. The petitioner filed a bill of entry for home consumption in respect of one of the lots of the goods but the customs authorities had imposed auxiliary duty at the rate of 35% ad valorem. Such imposition of duty according to the petitioner was invalid and without jurisdiction.

5. The respondent authorities contended first of all that being aggrieved by such assessment the petitioner ought to have availed of the alternative remedy provided in the statute itself. Instead of resorting to extraordinary jurisdiction of this Court under Article 226. The petitioner had already moved another writ petition claiming therein that brass scrap is a master alloy and do not fall under Notification 156/77-Cus. The said notification was omitted from the Notification No. 136/82-Cus. vide Notification dated 16th November, 1982. Since the goods were removed from the warehouse after 16th November, 1982, the Notification No. 136/82-Cus. was no more valid for such consignment. As per Section 15 of the Customs Act rate of duty applicable to any imported goods shall be the rate in force in the case of the goods cleared from a warehouse actually removed from the warehouse. Hence, the parties contention that the benefit of Notification is available when the goods crossed the customs barrier and entered the territorial waters of India during the subsistence of the notification is not correct. The petitioner having its registered office at Ballarpur in the State of Maharashtra cannot invoke the writ jurisdiction of this court hence this application is liable to be dismissed. Further the respondents contended that the brass scraps does not fall within the category of master alloy since it does not satisfy the definition of master alloy given in Tariff C.T.A. 75. The warehouse bill of entry was filed u/s 59 Sub-section (1) of the Customs Act, 1962 whereas home consumption bill of entry is filed u/s 46 of the Customs Act. As per Section 15 of the Customs Act the date of presentation of the bill of entry and the date of final entry of the Vessel is the criteria for determination of rate of duty whereas for ex bond bill of entry date of removal of the goods from the warehouse is the test. The petitioner cannot be allowed to approbate and reprobate inasmuch as in an earlier writ petition, the writ petitioner claimed that brass scrap did not fall under Notification No. 156/77-Cus., dated 16th July, 1977. Now in the instant petition, the same importer is claiming exemption of auxiliary duty taking a contrary stand by contending that the brass scrap fall under such notification. For basic customs duty the petitioner denied that Notification No. 156/77-Cus., dated 16-7-1977 covered brass scrap but while claiming exemption for auxiliary duty relying on the Notification No. 136/82-Cus. and claimed benefit thereunder. Since the petitioner has applied for removal of the goods from the warehouse after the withdrawal of the exemption for such brass scrap, the petitioner is not entitled to any benefit of the same on the basis that the goods reached the territorial waters

of India prior to the withdrawal of the exemption. The respondents relied upon the judgment of the Supreme Court of India dated 11th June, 1985 in Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, .

6. Relying upon the judgment of the Supreme Court referred to by the respondents and accepting the contentions raised on behalf of the respondent authorities, this court dismisses this application. The Rule is discharged and all interim order vacated.

7. Liberty is granted to the customs authorities to encash the Bank Guarantee or any other Security furnished by the petitioner.