(1991) 10 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 1587 of 1985

Bharat Cottage Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:
Customs Act, 1962 — Section 25

Citation : (1992) 59 ELT 30

Hon'ble Judges : M.L. Pendse, J;A.D. Mane, J

Bench : Division Bench

Advocate : Shri M.R. Sathe, K.K. Tated and Mr. Seervai, for the Appellant; Shri K.R. Bulchandani, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1 is a partnership firm registered under the Partnership Act, and had placed order for import of 88 Metric Tonne of High Density Polyethylene on Vinmar Impex Inc. U.S.A. On arrival of the imported goods the petitioners filed bills of entries for home consumption. The rate of duty prescribed under Heading No. 39.01/06 of Chapter 39 of the Customs Tariff Act, 1975 in 100%. The Central Government in exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 published an exemption notification dated August 2, 1976, inter alia, providing that the goods specified in column (2) of the Table annexed to the notification and falling under the Heading Number in the First Schedule to the Customs Tariff Act when imported into India from specified countries would be entitled to the exemption from payment of duty as specified in column (4). On import the Assistant Collector of Customs levied auxiliary duty, additional duty and landing charges and declined to grant advantage of the exemption notification as claimed by the petitioners. The petitioners feeling aggrieved, approached this Court by filing the present petition under Article 226 of the Constitution of India.

2. The challenge in the petition is to levying of (a)(i) auxiliary duty at the rate of 30% and (ii) additional duty at the rate of 42%; (b) landing charges, and (c)

refusal to grant exemption under the notification dated August 2, 1976. It is required to be stated at the outset that the challenge to levy of auxiliary duty, additional duty and the landing charges was given up by the petitioners in view of the decision reported in 1984 (16) E.L.T. 47 Raja Lakshmi Mills Ltd. & Ors. v. Union of India & Ors., in regard to auxiliary duty and additional duty and in view of the decision reported in Ashok Traders Vs. Union of India and another, , in respect of landing charges and in view of the decision reported in Polyset Corporation and others Vs. Collector of Customs, Bombay and another, , in respect of packaging charges. The sole controversy which survives for consideration is whether the petitioners are entitled to claim exemption from payment of duty in accordance with the exemption notification dated August 2, 1976 in respect of import of High Density Polyethylene.

3. To appreciate the claim of the petitioners it is necessary to set out the Tariff Item under Heading No. 39.01/06 of Chapter 39 of the Customs Tariff Act, 1975.

-- Heading Sub-heading No. and description Rate of duty Duration when No. of article. ------------ rates of duty Standard are protective. pre. Area -- 39.01/06 Condensation, poly condensation 100% - - and poly addition products, whether or not modified or polymerised, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated Polyesters, ailicones); polymerisation and co-polymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives polyacrylic and polymethacrylic derivatives, coumarone indene resins); regenerated cellulose; cellulose nitrate, cellulose acetate and other cellulose esters, cellulose ethers and other chemical derivatives of cellulose, plasticised or not (for example, collodions, celluloid) vulcanised fibre); hardened proteins (for example hardened casein and hardened gelatin); natural resins modified by fusion (run guns); artificial resins obtained by etherification of natural resins or of resinic acids (ester gums); chemical derivatives of natural rubber for example, chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers, artificial resins, and artificial plastic materials including alginic acid, its salts and esters; linoxyn. -- Serial No. 6 of the exemption notification reads as follows : -- Sr. Description of goods Heading No. in the Extent of tariff No. con-First Schedule to the cession Customs Tariff Act, 1975 -- 6. POLYMERISATION and copolymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, cumarone-indene resins) : (i)

Polyvinyl chloride 39.01/06 50 per cent of the standard rate of duty. (a) Liquid (b) Powder and grains (c) Other forms (ii) Polyvinyl acetate 39.01/06 -do- (iii) Polystyrene 39.01/6 -do- (a) Liquid (b) Powder and grains (c) Other forms. --

Shri Sathe, learned counsel appearing on behalf of the petitioners, and Shri Seervai, learned counsel appearing for the Petitioners in the companion petitions, submitted that the action of the Department in denying advantage of the exemption notification is clearly erroneous. The learned counsel urged that the two conditions required for securing advantage of the exemption notification are (1) that the imported goods must fall under column (2) of the exemption notification, and (ii) the import is from the specified countries. It is not in dispute that the import is from the specified country and the short question for determination is whether the imported article falls within column (2) of the exemption notification. Shri Sathe submitted that the plain reading of column (2) in respect of serial No. 6 of the exemption notification makes it clear that Polymerisation and copolymerisation products like polyethylene are entitled to exemption. It was contended that the exemption notification merely gives an illustrative list of the products which are entitled to exemption and in support of the submission reliance is placed on the expression "for example". Shri Bulchandani, learned counsel appearing on behalf of the Department, on the other hand urged that the advantage of the exemption notification is available only to the three items, that is polyvinyl chloride, polyvinyl acetate and polystyrene which are items (i), (ii) and (iii). Shri Bulchandani submitted that column No. 2 of serial No. 6 of the exemption notification carves out a portion of the Heading No. 39.01/06 of the Tariff Item and further provides that only three items set out in (i), (ii) and (iii) are entitled to exemption. It is not possible to accede to the submission of Shri Bulchandani.

4. The plain reading of serial No. 6 of the exemption Notification makes it clear that Polymerisation and copolymerisation products are entitled to exemption from payment of duty. It is not possible to accede to the submission of Shri Bulchandani that the expression "for example polyethylene, polytetrahaloethylenes etc." are merely redundant and have been blindly lifted from the tariff item. It is not permissible to assume that the Central Government was using expressions which are totally surpluses in the exemption notification. It is well settled rule of interpretation that the courts must assume that every word used in the exemption notification was intended to be given effect to and more so, in the taxing statute. In case the contention of Shri Bulchandani is accepted that the exemption notification is limited only to three items set out under (i) to (iii), then the polymerisation products and which are set out as an illustrative list would be totally redundant and it will have to be assumed that these words were used without intending to give advantage of exemption notification. It is not permissible for the Court to treat the words of the exemption notification as a mere surplus. Shri Bulchandani contended that the products like polyvinyl chloride, polyvinyl acetate and polystyrene, which are set

out under (i), (ii) and (iii) are also in the illustrative list of polymerisation and copolymerisation products and as only these three products are carved out of the illustrative list it should be held that the Government intended to give exemption only to these three products. It is not possible to imagine as to what was the intention of the Central Government and it is necessary to consider whether the advantage of the exemption is available by looking to the plain words of the notification. In our judgment, the import of polyethylene is clearly entitled to the advantage of exemption notification.

Shri Bulchandani made a faint submission that the rate of exemption is set out only against the three items set out under (i), (ii) and (iii) but that fact, in our judgment, would make no difference to the entitlement of exemption to all the items of polymerisation and copolymerisation products.

5. Shri Bulchandani placed strong reliance upon the decision of the single Judge of this Court reported in Shah Enterprises Vs. Union of India, . The learned single Judge held that the advantage of the exemption under the notification is not available to polymerisation and copolymerisation products save and except those which are set out under (i), (ii) and (iii) in serial No. 6 of the notification. The learned Judge felt that the Table does not merely reproduce the nomenclature but purports to qualify it either by taking out some goods only from the illustrations of goods given in the nomenclature and therefore the exemption is not intended to all the goods answering the nomenclature but confined only to those which are specifically carved out from the general nomenclature. The learned Judge felt that the specific products are set out under (i), (ii) and (iii) in order to identify the goods to which exemption notification is applicable. We are afraid we cannot accept the reasoning and the conclusion recorded by the learned single Judge. The construction put upon the notification by the learned Judge overlooks the specific words "polymerisation and copolymerisation products (for example, polyethylene etc.)". As mentioned hereinabove it is not permissible to ignore the specific words of the notification and assume that the exemption notification initially carves out certain portion of the Tariff Item and thereafter further carves out only some products to which exemption is available. In our judgment, the plain reading of the notification makes it clear that all polymerisation and copolymerisation products are entitled to the advantage of the exemption.

It is required to be stated that the learned single Judge observed that there is too much looseness in drafting the notifications and particularly in describing the goods in the tables annexed to the notification. In case the learned Judge felt that because of the looseness in drafting, two interpretations are possible, then the interpretation favourable to the tax payer ought to have been accepted. It is well settled rule of interpretation in taxing statute that the interpretation which is advantageous to the tax payer should be adopted. We have no hesitation to conclude that the advantage of the exemption notification is available to all the products which are set out under serial No. 6. The action of the Assistant

Collector of Customs in refusing advantage of the exemption notification therefore cannot be sustained.

6. Accordingly, petition partly succeeds and it is declared that the petitioners are eligible to exemption available under notification dated August 2, 1976, as amended from time to time, in respect of import of High Density Polyethylene and for which bills of entry were filed. All other reliefs stand refused.

In the circumstances of the case there will be no order as to costs.

The Department is entitled to enforce the bank guarantee in respect of claims which have been turned down. In case the bank guarantee is not alive then the Department is at liberty to recover the amount from the petitioners.

The bond furnished by the petitioners in respect of the claim for exemption notification to stand discharged after the period of four weeks.

