(1990) 09 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1215 of 1979

Century Spinning and Manufacturing Co. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-09-1990

Acts Referred:
Customs Act, 1962 — Section 2(23), 25(1), 27

Citation : (1991) 51 ELT 217

Hon'ble Judges : M.L. Pendse, J;M.F. Saldhana, J

Bench : Division Bench

Advocate : Mr. Soli K. Cooper, instructed by M/s Amarchand Mangaldas and Hiralal Shroff and Co, for the Appellant; Mr. R.V. Desai and Mr. N.P. Menon, for the Respondent

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner Company is challenging notice of demand dated April 20, 1979 served by the Superintendent of Customs and Central Excise, Century Rayon Range, Shahad, Dist. Thane. The facts giving rise to service of this notice are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioner Company.

2. The petitioner Company runs a factory situated at Shahad near Kalyan, and manufactures rayon yarn for which wood pulp is used as a raw material. The Company imports wood pulp from outside the country from time to time. The import of wood pulp is liable to payment of customs duty and the countervailing duty under Tariff Item No. 68. The Company imported various consignments of wood pulp between February 1978 and February 1979 and the imported material was stored in the bonded warehouse. On August 2, 1976 the Central Government in excise of powers conferred by sub-section (1) of Section 25 of the Customs Act exempted goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act when imported into India from the whole of the additional duty leviable thereon u/s 3 of the Customs Tariff Act, 1975. The

notification was amended on April 27, 1978, but the amendment does not take away the exemption granted earlier. In view of the exemption notification at the time of import the Company did not pay any customs duty or additional duty.

3. The Company cleared a part of the imported material between March 1, 1979 and April 20, 1979 from the bonded warehouse. The Superintendent of Central Excise then served the impugned notice claiming that the countervailing duty of customs was imposed on imported goods since March 1, 1979 and therefore the petitioners are liable to pay countervailing duty at 8% on the imported wood pulp at the time of clearance from the bonded warehouse. It is required to be stated at this juncture that the exemption provided by notification dated August 2, 1976 as modified by the notification dated April 27, 1978 was available only upto March 1, 1979. The notification published by the Central Government on March 1, 1979 rescinds the earlier notification and thereby the advantage of exemption was withdrawn. The demand notice served by the Superintendent is under challenge.

4. Mr. Cooper, learned Counsel appearing on behalf of the petitioners, submitted that the demand notice issued by the Superintendent is entirely illegal and the assumption of the Superintendent that the wood pulp was imported only on the date when it was cleared from the customs bonded warehouse is incorrect. The submission is correct and deserves acceptance. It is not in dispute that the wood pulp was imported by the Company between February 1978 and February 1979, that is at the time when the exemption notification was in operation. The incidence of duty occurs when the goods are imported and that stage occurred as soon as the goods were imported within territorial waters of this country. The storing of goods in bonded warehouse is for the convenience of the importer and the date of import cannot be determined with reference to the date on which cleared from the bonded warehouse. The date of import is on the date when the goods cross the barrier and enter into the territorial jurisdiction of this country. The date of import therefore is between February 1978 and February 1979, and the imported goods were not liable for payment of countervailing duty in view of the exemption notification. It is therefore obvious that the impugned demand notice is contrary to law and cannot be sustained.

5. Accordingly, rule is made absolute and the demand notice dated April 20, 1979, copy of which is annexed as Exhibit ''C'' to the petition, is quashed. The Company had cleared the remaining imported goods from the bonded warehouse during the pendency of the petition on furnishing bank guarantee in respect of demanded duty. The bank guarantee would now stand discharged. There will be no order as to costs.