(2002) 11 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No''s. 1680, 1987, 2005, 2008, 2108, 2151, 2225 and 2363 of 1989 and 63, 1359 and 2015 of 1990

Century Textiles and Industries Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:
Customs Act, 1962 — Section 28A

Citation : (2003) 162 ELT 33

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : R.A. Dada, D.H. Mehta, N.M. Shah and K.J. Presswala, instructed by Mulla and Mulla C.B. and C., R.V. Govilkar, V.J. Maniar and Shriodkar, instructed by Shirodkar and Co., A. Sethi, K. Parsorampuria, M. Sanklecha and J. Lewis, instructed by S.P. Bharti, for the Appellant; A.J. Rana, K.R. Choudhari, N.V. Masurikar and S.M. Shah, instructed by T.C. Kaushik, for the Respondent

Judgement

1. In these group of petitions, the short question raised is whether the ''Autoconers'' imported by the Petitioners can be denied benefit of exemption Notification No. 71/87, dated 1st March, 1987 as amended from time to time. The said exemption notification granted partial exemption from basic customs duty and total exemption from payment of additional duty to the Autoconers. There is no dispute about the payment of auxiliary of 5% on the imported Autoconers. Thus the only issue raised in this petition is regarding the availability of the exemption Notification to the Autoconers imported by the Petitioners.

2. It is not in dispute that at the relevant time the Notification No. 71/87-Cus., dated 1st March, 1987 as amended by Notification No. 63/89-Cus., dated 1st March, 1989 exempted Autoconers from payment of basic Customs Duty in excess of 35% and there was total exemption from payment of additional duty. By Notification No. 143/89, dated 21st April, 1989 the said exemption was deleted for Autoconers. However, by Notification No. 9/90-Cus., dated 1st February, 1990 the concessional rate of duty was restored to the Autoconer

Machines.

3. It is also not in dispute that on a representation made by some of the Textile Mills, the Central Government, in exercise of its powers u/s 28A of the Customs Act, 1962 had issued a Notification No. 12/99, dated 5th February, 1999 thereby directing that the 11 textile mills named therein, will not be required to pay basic customs duty and additional duty in excess of the rate prescribed under Notification No. 71/87, on the Autoconers imported during the period from 21st April 1989 to 31st January 1990. In other words, by the aforesaid Notification dated 5th February 1999 the Central Government extended the benefit of Exemption Notification No. 71/87 (as amended) to the Autoconers imported during the period when the said notification was not in force.

4. Since the Government has taken policy decision to allow the benefit of exemption Notification No. 71/87 to the Autoconers imported during the period from 21st April 1989 to 31st January 1990 in respect of 11 textile mills, we see no reason as to why the said benefit should be denied to the petitioners, who have also imported Autoconers during the same period. The Respondents in their affidavit in reply, have not set out any cogent reasons for denying the benefit of the said exemption Notification No. 71/87 to the Petitioners. The Respondents have not pointed out as to why the benefit of exemption Notification No. 71/86 has been granted to the 11 textile mills to the exclusion of other importers who had imported Autoconers during the same period. Mr. Rana, learned Senior Counsel appearing on behalf of the Respondents, fairly stated that it will be difficult to sustain the action of the Respondents in granting the benefit of the Notification No. 71/87 only to the 11 textile mills and deny the benefit of the said notification to the other importers who had imported Autoconers during the said period.

5. In this view of the matter, we are of the opinion that the Petitioners cannot be denied benefit of Notification No. 12/99 provided the Petitioners have complied with the conditions set out in the Notification No. 71/87-Cus. as amended by Notification No. 63/89 and have imported Autoconers during the period from 21st April 1989 to 31st January 1990.

6. Accordingly, we direct the Petitioners to make an application to the Respondents within four weeks from today, seeking benefit of Notification No. 12/99 to the Autoconers imported by the Petitioners. The Respondents shall dispose of the said application on merits as early as possible at any rate within eight weeks from the date of receipt of the application from the Petitioners. The Respondents shall grant the benefit of Notification No. 12/99 to the Petitioners, only if the Petitioners have complied with the conditions set out in Notification No. 71/87 as amended by Notification No. 63/89 and only if the import of Autoconers is during the period 21st April, 1989 to 31st January 1990. It is made clear that if the Respondents hold that the Petitioners are entitled to the benefit of Notification No. 12/99 then the Petitioners will be required to pay basic customs duty at the rate of 35% along with 5% auxiliary duty payable on the

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said Autoconers.

7. The bank guarantee, if any, executed pursuant to the interim order of this court shall be kept alive by the Petitioners till the disposal of their application by the Respondents and for a further period of eight weeks thereafter.

8. The petition is disposed of in above terms. However, in the facts and circumstances of the case, there will be no order as to costs.

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