

(1995) 08 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1480 of 1995

Cimmco Birla Ltd.

APPELLANT

Vs

Commissioner of Customs, Bombay

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 25

Citation : (1996) 82 ELT 206

Hon'ble Judges : S.H. Kapadia, J;M.B. Shah, J

Bench : Division Bench

Advocate : Mr. V.B. Mishra, Ms. Nitya Mehta and Mr. Sunil Mehta, for the Appellant; Mr. R.V. Desai, for the Respondent

Judgement

S.H. Kapadia, J.—Being aggrieved by the order dated 28-6-1995 of the Respondent No. 2 directing the Petitioners to pay duty on import of Rollers (being components of Cement Manufacturing Plant), the Petitioners have filed this Petition under Article 226 of the Constitution.

2. The facts giving rise to this Petition, briefly, are as follows :-

3. Under the Import Policy (1990-1993), Petitioners were granted Special Imprest Licence on 11-1-1991 for import of raw materials and components (Roller Press) for manufacture of Cement Plant Machinery under Duty Exemption Scheme. The import against the Special Imprest Licence was exempt from payment of duty. Accordingly, in March 1992, Petitioners imported 5 Rollers [Presses]. The goods were cleared for home consumption. The goods on importation in 1992 were given benefit of duty exemption. It is the case of the Petitioners that the four Rollers failed during the period December, 1994 upto February, 1995 and since the Rollers were required to be replaced the damaged/failed Rollers came to be re-exported to Germany in May, 1995 (i.e. after three years). The replaced Rollers thereafter once again came to be imported in 1995. The Petitioners claim that the said Rollers are not fresh imports but they are the

replacement of the failed/damaged Rollers which were earlier imported without payment of duty in 1992. In the Petition, the short point therefore which arises for determination is, whether the alleged replaced Rollers imported in 1995 could be said to be replacement of the old Rollers or whether they were fresh imports under the present Import Policy. By affidavit in reply filed by the Respondent No. 2, it is pointed out that even prior to re-export of the damaged Rollers the Director General of Foreign Trade vide letter dated 15-2-1995 had informed the Petitioners that the import of the subject goods was not covered under the Duty Exemption Scheme of the current Import Export Policy in force. At this stage, it may be mentioned that the earlier Policy was for the period 1990-1993. The Special Imprest Licence given to the Petitioners expired in June, 1992. The imports of the goods were given benefit of exemption in 1992 and after three years, Petitioners claim that the Rollers failed and, therefore, they were required to be re-exported in 1995. It is also claimed by the Petitioners that the subject import goods constitutes replacement and not fresh imports.

4. At the outset it may be mentioned that although the Petition was for admission, we heard the parties at length. We have also considered the various authorities and the written submission tendered on behalf of the Petitioners. It is not necessary to go into various authorities cited on behalf of the Petitioners because the entire issue which arises in this Petition is a pure issue of fact. The legal propositions advanced on behalf of the Petitioners are well settled. They are required to be applied to the facts of the present case. We may also mention that the learned counsel for the Petitioners conceded that the impugned order is appealable but it was argued on behalf of the Petitioners that since the law was well settled and since the impugned Authority has acted without jurisdiction, the matter could be decided at this stage particularly because, according to the Petitioners, the Respondents were wrongly demanding duty.

5. On basic facts, there is no dispute. Under the earlier Import Policy of 1990-1993, Imprest Licence was issued under the Duty Exemption Scheme in favour of the Petitioners. Under the said Scheme, components for manufacture of Cement Plant Machinery could be imported without payment of duty. Petitioners imported Rollers in 1992. They did not pay duty thereon and after three years on the ground that the Rollers had failed they were re-exported in 1995. By this time earlier Policy ended in 1993. By this time the Special Imprest Licence ended on June, 1993 and it is for this reason that the Director General of Foreign Trade vide letter dated 15-2-1995 had informed the Petitioners that the Petitioners' request cannot be considered as the import of the Rollers was no more covered under the Duty Exemption Scheme of the current Import Policy. Further in the present Writ Petition under Article 226 of the Constitution, it is not possible for this Court on facts to come to the conclusion that import of Rollers in 1995 was a replacement/repair of the old Rollers which were imported in 1992 without payment of duty. Petitioners have not preferred any appeal as stated above to the Appellate Authority. It is not possible to accept the contention of the Petitioners that in every matter replacement means repairs per se. Ultimately, it

will depend on facts of each case. One more aspect may also be mentioned that the Petitioners claim exemption by placing reliance on Exemption Notification Exhibit N-3. According to the Petitioners, the Rollers imported in 1995 were entitled to the benefit of exemption because the Central Government has exempted goods imported into India for repairs. It is well settled that exemption Notification is required to be read strictly. As stated hereinabove, ultimately it will depend on facts of each case as to whether the import of the Rollers in 1995 on the facts of this case constitutes Repair under the Notification. One more aspect may also be mentioned namely that after the Petitioners received letter of the Director General of Foreign Trade dated 15-2-1995, Petitioners applied for ad hoc/ Special Exemption u/s 25(2) of the Customs Act by approaching Ministry of Finance. This application was also rejected because the Government felt that under the above circumstances Special Exemption cannot be granted. We do not see any reason to interfere with the said decision. Once the Petitioners failed to obtain Special Exemption, the 2nd Respondent was entitled to enforce the demand.

5. In the above circumstances, on facts, we are not inclined to interfere under Article 226 of the Constitution. Accordingly, Petition is rejected.

6. Issuance of certified copy of this order is expedited.