
(1996) 09 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No. 4696 of 1984

Collector of Customs, Bombay

APPELLANT

Vs

J.K. Synthetics and Ltd.

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Citation : (1996) 87 ELT 332 : (1997) 10 SCC 460

Hon'ble Judges : S. P. Bharucha, J; K. S. Paripoornan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The order under appeal passed by the Customs, Excise and Gold (Control) Appellate Tribunal on 6th September, 1984 records thus :

When the appeal was taken up Sri Ravinder Narain for the appellants mentioned that in view of the ratio of the judgment of this Tribunal in Order No. 516/84-C, dated 2-8-1984 (Appeal No. CD (SB) (T) 7/77-C), this appeal has to be allowed. Sri A.S. Sunder Rajan, JDR, for the respondent agrees that it is so.

2. On 9th July, 1985, upon a rectification application filed by the respondents, the number of the notification in the order under appeal was corrected so as to read "Notification No. 8/77, dated 24-1-1977" instead of "Notification No. 88/73, dated 1-3-1972". (sic) The order dated 9th July, 1985 records that the Departmental Representative, Mr. Sunder Rajan did not oppose the application.

3. The learned Addl. Solicitor General now draws our attention to the terms of Notification No. 8/77 and points out that for the exemption there under to apply it is necessary "that the aforesaid caprolactum is intended to be used and is used for the production of polyamide (nylon) yarn of not above 225 deniers...". He draws our attention to the order dated 16th June, 1978, of the Appellate Collector of Customs who had noted that the respondents had produced evidence to show that the caprolactum had been used as required by the said notification but they had not proved that the imported caprolactum had been intended to be

used in the said manner. The Appellate Collector had, therefore, held that, the first condition being not satisfied, the claim of the respondents to the benefit of the said notification had to be rejected. The learned Addl. Solicitor General submits that the Tribunal had not applied its mind to the terms of the said notification and the case of the appellant that its terms were not satisfied.

4. We find that the Tribunal decided the matter upon the concession of the Departmental Representative appearing for the appellant that the appeal before the Tribunal had to be allowed in view of its earlier decision in Order No. 516-84-C, dated 2nd August, 1984, the appeal against which, incidentally, this Court has dismissed on 24th September, 1996 in Civil Appeal No. 4202 of 1984, Collector of Customs, Bombay v. J.K. Synthetics Ltd. Even when the respondents sought rectification of the order of the Tribunal, requiring the correct number and date of the said notification to be mentioned, the appellant did not wake up to the position now canvassed on their behalf.

5. This may not be a concession on a point of fact which would bind the appellant, but it is, in the circumstances, not appropriate for us to interfere in appeal. It shall be open to the appellant to move the Tribunal in review or in such other manner as is deemed appropriate, if permissible in law, and the Tribunal may decide such application on its merits.

6. The appeal is dismissed, with no order as to costs.