

(1998) 01 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 526 (NM) of 1993

Collector of Customs, Bombay

APPELLANT

Vs

Mahavir Aluminium Ltd.

RESPONDENT

Date of Decision : 14-01-1998

Acts Referred:

Citation : (1998) 6 AD 126 : AIR 1998 SC 2959 : (1998) AIRSCW 2735 : (1998) 60 ECC 261 : (1998) 77 ECR 233 : (1998) 98 ELT 298 : (1998) 4 JT 316 : (1998) 3 SCC 161 : (1998) 8 Supreme 562

Hon'ble Judges : S. Rajendra Babu, J;S. C. Agrawal, J;G. B. Pattanaik, J

Bench : Full Bench

Advocate : Harish N. Salve

Final Decision : Dismissed

Judgement

1. M/s. Mahavir Aluminium Ltd. (hereinafter referred to as "the assessee") had imported one Extrusion Press along with accessories from U.K. in three consignments under bills of entry filed between 24-4-1988 and 17-5-1988. The said goods were classified under Heading 98.01 of the Customs Tariff. In respect of import under the Project Import Regulations 1986 customs duty was payable at the rate of 45% basic plus 45% auxiliary. The assessee paid the duty on that basis. Under Notification No. 40/78-Cus (as amended) there was a concession in the matter of customs duty payable on Extrusion Press falling under Chapter 84 of the Customs Tariffs and excise duty was payable at the rate of 35% basic. The claim of the assessee for the benefit of concessional rate of duty was rejected by the Assistant Collector as well as by the Collector of Customs (Appeal). The assessee filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). The question that arose for consideration before the Tribunal was whether the Extrusion Press imported by the assessee in accordance with the Project Import Regulations 1986 and assessed to customs duty under Heading 98.01 of the Customs Tariff at the rate of 45% basic plus 45% auxiliary was eligible for assessment at the rate of 35%

basic in terms of Notification No. 40/78-CUS (as amended) in which at Serial No. 23 of the annexed table Extrusion Press falling under Chapter 84 has been specifically mentioned. By its judgment dated 24-4-1992, the Tribunal decided the said question in favour of the assessee on the basis of its earlier judgment in 1992 (42) ECR 401 The Tribunal has placed reliance on the following clause in the notification dated 19-4-1985:

"Nothing contained in this notification shall affect the exemption granted under any other notification of the Government of India for the time being in force from the duty of customs specified in the said First Schedule in respect of the goods referred to in this notification."

Feeling aggrieved by the said decision of the Tribunal, the Revenue has filed Civil Appeal No. 526 (NM) of 1993.

2. The assessee asked for finalisation of assessment and refund of the excise duty on the basis of the judgment of the Tribunal. Since no action was taken a writ petition (Civil Writ Petition No. 686 of 1993) was filed in the Bombay High Court for a direction to the authorities to comply with the order of the Tribunal. The said writ petition was dismissed by the High Court by order dated 24-4-1993 on the ground that an appeal and stay application were pending in this Court. Civil Appeal No. 155 of 1994 has been filed by the assessee against the said order of the High Court.

3. Shri Chaudhary, the learned counsel appearing for the Revenue in support of Civil Appeal No. 526 of 1993, has placed reliance on the decision of the Madras High Court in Appraiser, Madras Customs Vs. Tamil Nadu Newsprint Papers Ltd., and has submitted that since the machinery in question was imported by the assessee under the Project Import Regulations, the assessee is liable to pay the duty as per Heading 98.01 of the Customs Tariff and is not entitled to claim the benefit of Notification No. 40/78-CUS (as amended).

4. We have perused the said judgment of the Madras High Court which has been taken note of by the Tribunal in its earlier judgment in Ecoplast (P) Ltd. v. Collector of Customs (Supra) and it has been pointed out that a provision similar to that contained in the notification dated 19-4-1985 was not available at the time when the Madras High Court was required to deal with the matter. Moreover, the matter now stands covered by the judgment of this Court in Abrol Watches Pvt. Ltd. Vs. Collector of Customs, Bombay, wherein this Court has laid down that the exemption granted under the notification dated 19-4-1985 would not affect the exemption granted in respect of customs duty under any other notification and that the two notifications should be read together.

5. We are, therefore, in agreement with the view of the Tribunal that the assessee was not precluded from claiming the benefit of the lower rate of customs duty on the basis of Notification No. 40/78-CUS (as amended). Civil Appeal No. 526 of 1993 filed by the Revenue is, therefore, dismissed. No order as to costs.

6. Shri Harish N. Salve, the learned Senior Counsel appearing for the assessee in Civil Appeal No. 155 of 1994, submits that in view of the order dismissing Civil Appeal No. 526 of 1993, this appeal does not survive. Civil Appeal No. 155 of 1994 is accordingly dismissed. No order as to costs.