(1986) 07 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1701 of 1982

Dhoot Compack Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-07-1986

Acts Referred:

Citation : (1987) 11 ECC 86 : (1988) 19 ECR 327 : (1986) 25 ELT 636

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioners are a private limited company and are engaged in the manufacture of various plastic goods. In the manufacture of plastic goods the petitioners use a substance known as High Density Polyethylene Moulding Powder (HDPE). The petitioners import HDPE from various countries and the HDPE is manufactured out of raw Naphtha and chemicals derived from it. During March 1980 and August 1982 the petitioners imported diverse quantities of HDPE from foreign suppliers and details of the consignments imported are set out in detail at Exhibit ''D'' to the petition. The petitioners claim that at the time of clearance of the consignments, the petitioners were not aware of the exemption notifications issued under the provisions of the Customs Act. The petitioners claim that the petitioners learnt of the said notifications after some time when the judgment was delivered by this Court in petition filed by some other importers. The petitioners had also learnt that the petitioners are entitled to the advantage of exemption notification issued under the Central Excise Act and Rules.

2. Shri Setalvad, learned counsel appearing on behalf of the petitioners, submitted that the countervailing duty recovered by the respondents was invalid in view of the notification issued by the Central Government under Sub-section (1) of Section 25 of the Customs Act, 1962, copy of which is annexed as Exhibit ''A'' to the petition. The notification exempts the articles specified in column 2 of the table annexed thereto from the payment of so much of the duty of customs specified in the First Schedule as is in excess of rate of duty of customs

mentioned in the corresponding entry in Column 3 of the table. A perusal of the table indicates that Item 5 is High Density Polyethylene Moulding Powder and granules and the rate of duty prescribed is 50% ad valorem. Shri Setalvad urges that the benefit contained in the exemption notification extends to additional duty (countervailing duty). It is not possible to accept the submission of the learned counsel. The notification clearly recites that what is exempted is the duty of customs as is in excess of the rate of duty of customs mentioned in Column 3. The plain reading of the notification makes it clear that the petitioners cannot claim that the exemption under this notification extends to additional duty or countervailing duty. The first submission of the learned counsel must, therefore, fail.

3. Shri Setalvad then submits, with reference to the notification dated December 4, 1975, copy of which is annexed as Exhibit ''B'' to the petition and the notification, copy of which is annexed as Exhibit ''C'' to the petition, that the respondents could not have levied duty of excise in excess of the rates set out in these notifications. The two notifications are issued by the Central Government in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. The notifications exempt artificial or synthetic resins and plastic materials specified in column 2 of the table and manufactured from raw naphtha or any chemical derived therefrom from so much of duty of excise leviable as is in excess of the duty specified in column 3. In the first notification the rate of duty is 27% ad valorem. It was subsequently increased by the notification, Exhibit ''C'' to 35% ad valorem. The controversy as to whether these two notifications would apply in respect of import of HDPE stands concluded by decision of the Division Bench reported in 1982 E.L.T. 64, Century Enka Limited and Others v. Union of India & Others and by my judgment dated July 2, 1986 in Writ Petition No. 1182 of 1982. In view of the decision of the Division Bench and my decision, this petition must also partly succeed.

4. Accordingly, rule is made partly absolute and it is declared that the respondents should not have levied or collected additional duty of excise in excess of 35% ad valorem duty plus 5% additional excise duty on the import of HDPE made by the petitioners in between March 1980 to September 1982. The respondents are directed to ascertain the amount of excise duty recovered from the petitioners during this period, on the strength of the material which the petitioners will produce, and on such ascertainment refund the amount which was received in excess. The respondents are directed to complete the calculation and make refund within a period of three months from to-day. In the circumstances of the case, there will be no order as to costs.

Bank guarantee furnished by the petitioners to stand discharged.

