(1992) 09 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 568 of 1983

Dhrunal Chhotalal Patel APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:
Customs Tariff Act, 1975 — Section 3

Citation : (1993) 1 BomCR 68 : (1993) 95 BOMLR 45 : (1993) 63 ELT 27

Hon'ble Judges : Sujata V. Manohar, J;S.H. Kapadia, J;B.N. Srikrishna, J

Bench : Full Bench

Advocate : Shri Milind Sathe and D.H. Mehta, for the Appellant; Shri J.P. Deodhar, H.V. Mehta and K.C. Sidhwa, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—The petitioner carries on business in the name and style of Star Metal and Tubes Corporation at Bombay. The petitioner, in the course of his business, imported copper scrap which arrived in Bombay per vessel ''RISHI VALMIKI'' on or about 19th of March 1980. In respect of the copper scrap so imported the respondents demanded, inter alia, additional duty of customs. The petitioner, however, contended that copper scrap cannot be said to be "goods" and/or "Manufactured goods" within the meaning of the Central Excise Law and, hence, the goods were not exigible to any additional duty of customs u/s 3 of the Customs Tariff Act, 1975. The Assistant Collector of Custom has released the goods on the petitioner''s executing a bond for payment of additional duty of customs under Entry No. 68 of the Central Excise Tariff. In the present petition, the petitioner''s has challenged the levy of additional duty of customs u/s 3 of the Customs Tariff Act, 1975 on the copper scrap imported of customs is leviable on copper scrap and the same should be levied under Entry 26A(1) of the Central Excise Tariff as then in force and not under Entry 68 which is the residuary entry under the Central Excise Tariff.

2. The first contention of the petitioner that copper scrap cannot be considered as "goods" and/or "manufactured goods" within the meaning of the Central

Excise Law, and is therefore not exigible to excise and/or countervailing duty (additional duty u/s 3 of the Customs Tariff Act, 1975) is not now maintainable in view of the decision of the Supreme Court in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, . The Supreme Court has said that scrap has to be considered as exigible to excise duty. It has also said that Section 3(1) of the Customs Tariff Act, 1975 provides a measure of the additional duty of customs which has to be equal to the excise duty on a like article if produced or manufactured in India, as defined in explanation to that section and has held that scrap is exigible to additional duty of customs u/s 3(1) of the Customs Tariff Act, 1975. This issue therefore does not now survive.

3. The only point which requires consideration is whether copper scrap falls under Central Excise Tariff Item 26A as it stood at the time of the import of these goods, or whether it will be governed by the Residuary Entry 68 of the imported fall within any specific entry of the Central Excise Tariff, they will not fall under the Residuary Entry 68 of the Central Excise Tariff.

4. Central Excise Tariff Item 26A as it stood at the relevant time was as follows :

-- Item No. Tariff Description Rate of duty -- 26A Copper 1. In any crude form including ingots, bars blocks, slabs, billets, shots and pellets. 1A. Wire bars, wire rods and castings, not otherwise specified. 2. Manufactures, the following viz. plates, sheets, circles, strips and foils in any form or size. 3. Pipes and tubes. Explanation : ''Copper'' shall include any alloy in which copper predominates by weight over each of the other metals.

Item 26A was amended with effect from 1-4-1981 as a result of which waste and scrap of copper was specifically included in Tariff Item 26A as sub-item 1(b). After the amendment of 1-4-1981 Tariff Item 26A was as follows :

-- Item No. Tariff Description Rate of duty -- 26A Copper 1. In any crude form including ingots, bars, blocks, slabs, billets, shots and pellets. 1(a) Wire bars, wire rods and castings, not otherwise specified. 1(b) Waste and scrap. 2. Manufactures, the following, namely - plates, sheets, circles, strips and foils in any form or size. 3. Pipes and tubes, excluding shells and blanks therefor. 4. Shells and blocks, for pipes and tubes.

Explanation I : ''Copper'' shall include any alloy in which copper predominates by weight over each of the other metals.

Explanation II : "Waste and scrap" means waste and scrap of copper fit only for the recovery of metal or for use in manufacture of chemicals. But does not include slag, dross, scalings, ash and other cuprous residues."

Although the express inclusion of copper waste and scrap in Tariff Item 26A was as a result of the amendment which came into effect from 1-4-1981, the respondents contend that the amendment is merely clarificatory. According to the respondents, even in Tariff Item 26A as it stood at the relevant time, i.e. prior to the amendment of 1-4-1981, sub-item (1) which deals with copper "in any crude form including ingots, bars, blocks, slabs, billets, shots and pellets" covers copper waste and copper scrap and hence additional duty of customs which is equivalent to excise duty leviable on similar goods if manufactured in India, has to be levied on copper scrap imported by the petitioner under Tariff Item 26A(1) of the Central Excise Tariff, as it stood at the relevant time.

5. This question directly arose in Writ Petition No. 2455 of 1982 and Writ Petition No. 2709 of 1982 before the Division Bench of K. Sukumaran & Dr. B. P. Saraf, JJ, who, by their judgment dated 1st of July 1992, held that Item 26A prior to its amendment on 1-4-1981 covered copper scrap. The ratio of the judgment, which is a very short judgment of four paragraphs, is in paragraph 2, to the following effect, "The description of the goods in the invoice and the Bill of Entry would clearly come within the above entry. (Item 26A prior to its amendment on 1-4-1981)". The description of the goods in the invoice and the bill of entry, however, is "copper scrap" and not "copper in any crude form" as specified in Entry 26A(1). When the present petition came up for hearing before a Division Bench (S. P. Kurdukar and A. V. Savant, JJ.), the Division Bench by its order of 28th of August 1992 said that the judgment of the Division Bench in Writ Petition No. 2709 of 1982 and dated 1st of July 1992 referred to above, needed consideration in the light of a detailed decision of the Kerala High Court in the case of Goods Agro Chemicals and Others Vs. Assistant Collector of Customs, . The Division Bench said that prima facie, and view taken by the Kerala High Court was more consistent and acceptable and hence it referred the following issue to a Full Bench for consideration : "Whether importer of copper scrap is liable to pay excise duty under Entry 68 or 26A of the Central Excise Tariff as it then stood prior to 1-4-1981."

6. Hence, the present writ petition has come up before us for consideration. Does Entry 26A(1) which refers to "copper in any crude form....." include copper waste and scrap ? Chamber''s Dictionary defines the word "crude" as, "raw, unprepared, not reduced to order or form, unfinished, undigested,.... unrefined". The Shorter Oxford Dictionary defines the word ''crude'' as, "in the natural or raw state, not changed by any process or preparation, not manufactured, refined, tempered, etc... Sub-item (1) of Tariff Item 26A, therefore, deals with copper in its natural or raw form, not changed by any process or preparation before it is utilised for any manufacture. Scrap, on the other hand, arises either in the course of manufacture, or it may consist of old and worn out items of copper which are thrown away. Shorter Oxford Dictionary defines "scrap" as "remnant of fragmentary portion; remnant of metal produced in cutting or casting scrap iron". According to Webster''s 3rd New International Dictionary, ''scrap'' means "small pieces, cuttings, or chips of stock removed in the process of making any product;

manufactured articles or parts rejected for imperfection or discarded because of excessive wear or lack of demand and used only as raw material solely for their processing". Therefore "copper in crude form", which describes copper before it is used in the process of manufacture, cannot cover "copper scrap" which arises as a result of the process of manufacture. Copper in crude form cannot therefore include copper scrap. Scrap is bought or sold in the market as scrap and it is not dealt with as copper in its crude form. It may be that copper scrap is used for reprocessing copper; and such reprocessed copper may be used in the manufacture of other items of copper as raw material. But the very fact that this is described as "reprocessed" copper shows that it is not copper in crude form. Therefore, Item 26A(1) cannot include copper scrap and waste.

7. We are fortified in the view which we have taken by a decision of the Madras High Court in the case of Mahavir Metal Works Ltd. and Another Vs. Union of India and Others, in which a similar question arose before the Madras High Court. It observed, "It is impossible to equate ''scrap'' with ''crude''. ''Scrap'' is something which gets eliminated in the course of and after the completion of a product .... The raw material for the product must have got crystallised into the ultimate substance, after the crude gets processed for that purpose. In contrast, crude is a substance in its natural unprocessed state, not altered or prepared for direct use in the making of any product by any process. Out of the crude, the raw material must come, which goes to make up the product and in the course of making up of the product out of that raw material fragments discarded and left over things are called ''scrap''. Hence, it is not possible to state that scrap would fall within ''crude''."

8. A similar view has been taken by the Kerala High Court in the case of Goods Agro Chemicals & Ors. (supra). The Kerala High Court, after considering the dictionary meaning of the word ''scrap'', as also the word ''crude'', came to the conclusion that copper scrap is not copper in its natural or raw state. It may come into existence during the process of manufacture or it may be material which is defective, condemned and discarded. It may be manufactured articles or parts rejected because of excessive wear. It may be manufactured articles or parts rejected because of excessive wear. It may be useful for reprocessing or for reworking. The metal contained in the scrap can be a secondary source for copper. With this characteristic feature it is not possible to contend that copper scrap has no separate identity. Scrap, in common parlance, is distinct from the crude raw material. Copper in crude form as described in Item 26A(1) before 1-4-1981 cannot thus include copper scrap or waste.

9. The petitioner also relied upon a decision of this Court in the case of Indo Plast and another Vs. Union of India and others, . The Division Bench in that case was considering whether acrylic plastic scrap was liable to Central Excise duty or countervailing duty under Item 68 of the Central Excise Tariff or under Item 15A. As in the present case, Item 15A which dealt with "artificial or synthetic resins and plastic materials and cellulose esters and ethers and article thereof" was

amended by adding an explanation on 1-3-1982, as a result of which waste and scrap were included in this item. The plastic scrap in question, however, had been imported prior to the amendment. The Court said that it did not fall under Item 15A but it fall under Residuary Item 68. This case, of course, is not directly on point.

10. In view of the nature of Entry 26A(1) of the Excise Tariff at the relevant time, the copper scrap imported by the petitioner prior to 1-4-1981, does not fall within Tariff Item 26A(1) as it stood at the relevant time, that is to say, prior to its amendment of 1-4-1981. The imported copper scrap will therefore fall under the Residuary Item 68.

11. The decision of the Division Bench of Sukumaran and Dr. Saraf, JJ. dated 1-7-1992 in Writ Petition Nos. 2709 of 1982 and 2455 of 1982 is therefore overruled. An importer of copper scrap prior to 1-4-1981 is liable to pay additional duty of customs under Entry 68 of the Central Excise Tariff.

12. The respondents are therefore directed to levy additional duty of customs u/s 3 of the Customs Tariff Act on the above basis. The amount shall be calculated by the respondents as expeditiously as possible after notice to the petitioner. On such determination the same shall be paid by the petitioner to the respondents within eight weeks together with interest thereon at the rate of 12% per annum.

13. Rule is made absolute accordingly.

14. In the circumstances, there will be no order as to costs.

