(1992) 08 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 568 of 1982

Dhurunal Chhotalal Patel APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Citation : (1993) 63 ELT 25

Hon'ble Judges : S.P. Kurdukar, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri D.H. Mehta, instructed by M/s. Khona and Kayser, for the Appellant; Shri H.V. Mehta and J.P. Deodhar, for the Respondent

Judgement

Kurdukar, J.—The petitioner in this petition has raised a question as regards excisability of the Copper Scrap. The question is whether Copper Scrap imported by the petitioner falls under residuary Items 68 or Item 26A of the Central Excise Tariff, as it then stood prior to 1st April 1981.

2. The petitioner has imported Copper Scrap some time in 1980. The Assistant Collector of Customs, Bombay, by his order/letter dated 9-3-1982/23-9-1982 (Ex. D), has opined that Item 26A of the C.E.T. will apply to Copper Scrap as the name is covered by expression "Copper/Brass in any crude form". Accordingly, the Asstt. Collector held that duty leviable would be at the rate of 80% ad valorem basic duty under Chapter 74 of C.T.A. and Rs. 3300/- per metric tonne additional duty under Item 26A of C.E.T. This liability assessed by the Assistant Collector is sought to be impugned in this writ petition.

3. Mr. D. H. Mehta, learned Counsel appearing for the petitioner draw our attention to a reported decision of the Division Bench of the Kerala High Court in Goods Agro Chemicals and Others Vs. Assistant Collector of Customs, . As against this, Mr. H. V. Mehta, appearing for the respondents drew our attention to an unreported decision of the Division Bench of this Court in Dau Dayal Agarwal v. Union of India and Others (Writ Petition No. 2709 of 1982) dated July 1, 1992,

rendered by K. Sukumaran and Dr. B. P. Saraf, JJ. Mr. H. V. Mehta urged that decision of this Court holds the field and the same needs to be upheld.

4. After hearing Counsel for the parties and after perusing both these decisions, we are prima facie, of the opinion that the decision rendered by the Court on July, 1922, needs reconsideration. It is not disputed before us that the decision of the Kerala High Court is directly on the point and the same is diagonally opposite to the decision of the Division Bench of this Court.

5. At the outset, we may state that the Kerala High Court has considered various arguments raised on behalf of the parties as regards excisability of Copper Scrap, whether it falls under Entry 26A. The Kerala High Court accepted importer''s contention that Copper Scrap falls under Entry 68 (residuary) of C.E.T. The Division Bench of the Kerala High Court drew support to its conclusion from the decision of the Supreme Court in Union of India (UOI) and Others Vs. The Tata Iron and Steel Co. Ltd., .

6. The Division Bench of this Court does not seem to have considered various contentions raised by the Petitioner in Writ Petitioner No. 2709 of 1982. There is no reference to the decision of the Kerala High Court. Prima facie, we find that the view taken by the Kerala High Court is more consistent and acceptable.

7. In view of the above circumstances, we are of the opinion that the decision of the Division Bench of this Court in Writ Petition No. 2709 of 1982 rendered by K. Sukumaran and Dr. B. P. Saraf JJ on 1st July 1992 needs reconsideration.

8. The issue formulated by us for consideration of larger bench is as under :

"Whether importer of Copper Scrap is liable to pay excise duty under Entry 68 or 26A of C.E.T. as it then stood prior to 1-4-1981."

9. We, therefore, direct the Prothonotary to place the papers of this writ petition before the learned Chief Justice for appropriate order.

