
(1986) 05 CAL CK 0027
In the Calcutta High Court
Case No : Matter No. 226 of 1983

Dunbar Mills Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-05-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8(2)
Customs Act, 1962 — Section 159, 25, 25(1)

Citation : (1986) 10 ECC 214 : (1986) 26 ELT 898

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Judgement

Sudhir Ranjan Roy, J.—The petitioner No. 1 carries on business of manufacturing and selling, inter alia, textiles and blended yarn and the petitioner No. 2 is a shareholder of the petitioner No. 1.

2. The raw-materials required for the manufacturing process of the petitioner No. 1 include Viscose Staple Fibre. Such Fibre of various types is imported by the petitioner No. 1 from different foreign countries. One of the varieties of the Fibre is High Tenacity Viscose Staple Fibre, which is universally accepted and recognised in the trade, as "Durafil" Brand of High Tenacity Viscose Staple Fibre.

3. Viscose Staple Fibre is liable to Customs duty and the standard rate of duty specified for such Fibre in the Customs Tariff Act, 1975 is 140 per cent.

4. On November 1, 1980 the Central Government published two Notifications being Notification Nos. 215-CUS and 216-CDS both dated November 1, 1980 the text whereof are set out below :

Notification No. 215-CUS dated 1.11.1980.

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act 1962 (52 of 1962) the Central Government, being satisfied that it is necessary in the public interest to do so, hereby exempts viscose staple fibre and

viscose tow, falling within Chapter 56 of the First Schedule to the Customs Tariff Act 1975 (51 of 1975), when imported into India, from so much of the duty of customs leviable thereon under the said First schedule as in excess of 10% ad valorem; provided that nothing mentioned in this notification shall apply to -

- (i) high performance viscose staple fibre and high performance viscose tow, (tow)
- (ii) high tenacity viscose staple fibre and high tenacity viscose tow, (tow)
- (iii) high wet modulus viscose staple "fibre and high wet modulus viscose tow, and
- (iv) polynosic staple fibre and polynosic tow

Notification No. 216-CUS dated 1-11-1980

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act 1962 (52 of 1962) the Central Government being satisfied that it is necessary in the public interest to do so, hereby exempts the goods specified in the table annexed hereto and falling within Chapter 56 of the First Schedule to the Customs Tariff Act 1975 (51 of 1975). when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule :

- (i) high performance viscose staple fibre and high performance viscose tow;
- (ii) high tenacity viscose staple fibre and high tenacity viscose tow (tow);
- (iii) high performance viscose staple fibre and high wet modulus viscose tow;
- (iv) polynosic staple fibre and polynosic tow."

5. By a Notification dated August 26, 1982, the said Notification No. 215-CUS dated November 1, 1980 was amended by substituting "20% ad valorem in the place of 10% - ad valorem".

6. On or about September 14, 1982 the petitioners entered into two several contracts with a Firm of Bombay whereby and whereunder the petitioners agreed to buy a total quantity of 50 tons of "Durafil" Brand High Tenacity Viscose Staple Fibre manufactured by a firm of the United Kingdom.

7. The said firm caused the concerned goods to be shipped from the port Middleborough in England to the port of Calcutta on December 6, 1982.

8. By two separate notifications both dated December 14, 1982 the Central Government amended the Notification nos. 215-CUS and 216-CUS dated November 1, 1980 as already referred to earlier.

9. The results of the said amendments were that the effective rate of duty in respect of the goods covered by the said Notification No. 215 was raised to 30 per cent and the effective rate of duty in respect of the goods covered by the Notification No. 216 was raised to 20 percent.

10. However, though the concerned consignments were and are covered by the Notification No. 216 dated November 1, 1980 and were entitled to full exemption from Customs duty, the Customs authorities have been wrongfully contending that the same were covered by Notification No. 215 and refused to allow the goods to be cleared for Warehousing or home consumption except under Notification No. 215.

11. The concerned goods arrived at the Calcutta Port on. or about 17-2-83 and were cleared for Warehousing under appropriate bond.

12. According to the petitioners, they would not have imported the concerned goods unless there was total exemption of such goods from Customs duty in terms of the Notification No. 216. Relying on such notification the petitioner No. 1 caused the goods to be imported and thereby altered its position." The said Notification, being No. 216 constituted a clear representation on the part of the Central Government that goods covered by the said Notification if imported into India, would be totally exempt from duty of Customs. That being so, the Central Government cannot be permitted to go back on their representation and. realise any duty of Customs on the concerned goods on the principle of promissory estoppel.

13. As a matter of fact, the respondents were compelling the petitioners to pay Customs duty at the rate of 30 percent on the wrongful basis that Notification No. 215 is applicable and were "also compelling them to pay auxiliary duty and additional or countervailing duty before allowing clearance of the consignments.

14. The petitioners accordingly invoked the writ jurisdiction of this court for a writ in the nature of Mandamus commanding the respondents to desist from levying any duty of Customs including auxiliary and/or additional and/or countervailing duty in respect of the subject goods and also to allow clearance of the said goods without payment of any duty of Customs whether basic and/or auxiliary and/or additional, as well as for further reliefs.

15. The respondents contested by filing an affidavit-in-opposition.

16. Appearing on behalf of the petitioners it was contended by Mr. Pal, the learned Advocate, that the Notification No. 216 constituted a clear representation on the part of the Central Government that goods covered by the said Notification, which include High Tenacity Viscose Staple Fibre, if imported into India, would be totally exempt from duty of Customs and the petitioners having imported the subject goods, namely, High Tenacity Viscose Staple Fibre, relying upon the said Notification, the Central Government cannot be permitted to go back on their representation and realise any duty of Customs on the concerned goods on the principle of promissory estoppel. As a matter of fact, this was the only point which was urged by Mr. Pal in support of the case made out by the petitioners in the Writ petition.

17. In support of his contention Mr. Pal relied upon the decision of the Supreme

Court in *Union of India and Ors. v. Godfrey. Philips India Ltd. and Ors.* as reported in 1985 (4) SCC 309.

18. In the said case the Central Board of Excise and Customs by a letter dated 24-5-76 represented that the cost of corrugated fibre board containers in which packets of cigarettes were supplied to the wholesalers would not be includible in the value of the cigarettes for the purpose of assessment to excise duty. The respondents acted upon this representation and continued the use of corrugated fibre board containers for packing the cartons/outers of cigarettes and did not recover from the wholesale dealers the amount of excise duty attributable to the cost of such corrugated fibre board containers during the period 24th May, 1976 to 2nd November 1982. Subsequently, the Central Government having decided that the value of such containers would be includible in the value of the cigarettes for the purpose of assessment of excise duty, the respondents resisted such claim on the plea of promissory estoppel. The Supreme Court held that the Central Government and the Central Board of Excise and Customs were clearly bound by promissory estoppel to exclude the cost of corrugated fibre board containers from the value of the goods for the purpose of assessment of excise duty for the period 24th May, 1976 to 2nd November 1982.

19. While coming to the aforesaid conclusion it was, however, held by the Supreme Court that the letter dated 24th May, 1976 could not be brought within the terms of Sub-rule (2) of Rule 8 of the Central Excise Rules, 1944. The letter merely contained an executive direction of the Central Board of Excise and Customs supported by the Central Government and not in exercise of its legislative functions.

20. The instant case, however, relates to notifications issued u/s 25 of the Customs Act, 1962.

21. The Delhi High Court in *Bombay Conductors and Electricals Ltd. and Anr. v. Shri K. Chandramouli* (1984) ECC 1 held that Section 25 of the Customs Act is based on the theory of taxation. It delegates power to the Central Government, that is, the executive branch, to grant exemption generally from duty whenever it finds it necessary so to do in the public interest, either absolutely or subject to such conditions as may be specified in the notification or by a special order in each case under circumstances of an exceptional nature.

22. At the same time Section 159 of the Act says that these exemption notifications issued u/s 25 shall be laid before the Parliament as soon as may be after their issue and the Parliament may amend or reject them. This shows that the ultimate law making power is retained by the legislature in its "hands. It does not surrender it to the executive. This makes it perfectly clear that the Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate (*D.S. Garewal Vs. The State of Punjab and Another*,). That the legislature keeps control over the delegate is an indicia that it is a legislative power.

23. The Court further held that the power to fix the rate of tax was a legislative power. The statutory notifications issued u/s 25(1) of the Act were from first to last legislative in character. The author of the notifications was the Central Government, no - doubt, but the power that it wielded was legislative in character. Notifications issued u/s 25(1) was an exercise of sovereignty, that is, of authority to legislate. Therefore, to the notifications issued u/s 25(1) of the Act the doctrine of promissory estoppel had no application.

24. Similar view has been taken by the Madras High Court in *M. Jamal Company Vs. Union of India and Others*, .

25. In the said case, like the present one, no promise whatsoever was made by the Government to keep the exemption granted by the relevant notification alive indefinitely and upto a certain point of time and therefore, according to the Madras High Court, the exemption could be at any point of time put to an end and no person affected by such withdrawal of the exemption notification could plead promissory estoppel. The notification u/s 25 of the Customs Act according to the said decision, have the effect of suspending temporarily the collection of Customs duty. Such an exemption is by its very nature susceptible of being revoked or modified or subject to conditions at any point of time unless there is an indication to the contrary in the Notification itself.

26. It was further held by the Court following the decision of the Delhi High Court in *Jain Shudh Vanaspati v. Union of India* 1983 E.L.T. 1688 that the power to issue a Notification u/s 25(1) is a delegation of the legislative power given to the Central Government and such notifications issued u/s 25(1) are placed before the Parliament in terms of the provisions of Section 159 of the Customs Act.

27. In the instant case, the relevant Notification No. 216 was issued u/s 25 of the Customs Act, 1962 exempting High Tenacity Viscose Staple Fibre from Customs duty completely. The said notification was not operative either indefinitely or for a fixed period and the power to issue such notification being a legislative power, there could be no promissory estoppel against exercise of such power. Exemption Notifications u/s 25 are issued in public interest and where such public interest demands, it is within the discretion of the Government to withdraw such exemptions at any time. The decision of the Supreme Court in *Union of India v. Godfrey Philips India Ltd.* (Supra) can have no application here since in the said case there was representation made by the Central Board of Excise and Customs in the form of an executive direction contained in a letter. The said representation was not made in exercise of any legislative function as u/s 25 of the Customs Act, 1962.

28. In *Feno Plast Pvt. Ltd. and Another Vs. Union of India and Another*, it has been held by the Andhra Pradesh High Court that the power of exemption granted to Government u/s 25 of the Customs Act, 1962 was with a view to enable it to regulate, control and promote the industries and industrial production in the country. The Government was not bound by its notification

once issued and was free to modify or rescind them as and when public interest so demanded. An exemption notification, as such, cannot be made a basis for founding a promissory or equitable estoppel.

29. The Bombay High Court in Hindustan Spinning and Weaving Mills Vs. Union of India and another, has also adopted the same view.

30. That being so, the only contention raised by Mr. Pal fails.

31. The Rule, accordingly, is discharged and the interim orders do stand vacated.

32. The respondents will now be at liberty to realise the unpaid customs duty from the petitioners in accordance with law including encashment of the Bank guarantee as well as the bond. No order is made for costs.