(1994) 03 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1509 of 1984

Echjay Industries Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 09-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3(42)

Citation : (1994) 52 ECR 366

Hon'ble Judges : P.S. Patankar, J;M.L. Pendse, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.L. Pendse, J.—The petitioners are a Private Limited Company registered under the Companies Act and carry on business as manufacturers of Steel Forging at Rajkot in State of Gujarat. The petitioners imported one Multi Spindle Copying Duplicating and Profile Milling Machine complete with standard accessories. The import was from Italy. The machine was imported after payment of customs duty of Rs. 5,75,669.38. The machine could not be commissioned because of some defect and the defective part was required to be imported as replacement. The petitioners accordingly imported Contour Scan Valve. In support of import of this defective part, the petitioners claimed exemption from payment of customs duty in pursuance of exemption notification dated August 29,1970 issued by Government of India in exercise of powers conferred by Sub-section (1) of Section 25 of the Customs Act.

2. The notification, inter alia, provides that the articles and component parts thereof, when imported for replacement of defective articles or of component parts thereof, shall be exempted from the whole of the duty of customs leviable thereon, subject to the conditions. The relevant condition for the purpose of this petition reads as follows:

The defective articles were brought into India earlier from places outside India and are private personal properties of the importer.

The petitioners sought clearance of the replacement part without payment of duty and that request was turned down by order dated August 16,1984 passed by Assistant Collector of Customs AIR Cargo Complex, Bombay. The Assistant Collector held that the defective articles brought into India must be private personal properties of the importer and the expression "private personal" clearly connotes import by individual. The Assistant Collector held that the Notification would be applicable only to the private personal property of the individual and not in respect of a limited Company. The Assistant Collector felt that the imported value is a Milling Machine which is capital good belonging to the Company and consequently the benefit of the notification is not called for. The order of the Assistant Collector is under challenge in this petition filed under Article 226 of the Constitution of India.

3. Shri Thakkar, learned Counsel appearing on behalf of the petitioners, submitted that the decision of the Assistant Collector suffers from serious infirmity. It was contended that the object of exemption notification was to confer benefit upon the importers of a defective part which was earlier imported and the benefit cannot be denied to the Company on the ground that the words used are "private personal property". The earned Counsel relied upon definition of "person" u/s 3(42) of General Clauses Act, 1897 and which sets out that the expression includes any company or association or body of individuals, whether incorporated or not. The submission urged on behalf of the petitioners is correct and deserves acceptance. The Assistant Collector was clearly in error in referring to the dictionary meaning to deny the benefits to the petitioners. The Assistant Collector overlooked that the notification grants benefit to the importer and had never contemplated that the importer will be an individual and not an association or a Company. In our judgment, the order of the Assistant Collector is entirely incorrect and cannot be sustained.

Shri Bulchandani, learned Counsel appearing on behalf of the Department, submitted that CEGAT had taken identical view in the decision reported in 1987 (13) ECR 1 19 . The view taken by the Tribunal also refers only to the Dictionary meaning and is clearly erroneous. In our judgment, the petitioners are entitled to the reliefs.

4. Accordingly, petition succeeds and it is held that the petitioners are entitled to the benefit of exemption notification in respect of import of replacement article. As the petitioners have already cleared the consignment on furnishing Bank guarantee in pursuance of interim order, the only direction required is that the Bank guarantee shall stand discharged. In the circumstances of the case, there will be no order as to costs.

