(1983) 10 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 1641 of 1982

Finolex Pipes Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-10-1983

Acts Referred:
Customs Act, 1962 — Section 25

Citation : (1990) 47 ELT 316

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

Bench : Single Bench

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality of the order dated August 9, 1982 passed by the Assistant Collector of Customs, Bombay, and only few facts are required to be stated to appreciate the grievance of the petitioners.

2. The petitioners are importers of PVC Resin from a Company, known as Golden Bell Trading Company Limited, South Korea as well as other suppliers. The PVC Resin attracted Customs Duty under Heading 39.01/39.06 of the Customs Tariff Act, 1975. The duty was payable on an ad valorem basis and is determined on the basis of the value of the goods at the time when the goods are imported in India. The value, therefore, includes not only the original purchase price of the goods, but also the cost of packing, the cost of transportation, insurance, etc. On November 25, 1967, in exercise of the powers conferred u/s 25 of the Customs Act, the Central Government issued Notification No. 114 providing that where the goods are imported in India, which are packed in any materials, the materials in which the goods are so packed would be exempt from the whole of the duty of customs including the countervailing duty, provided that the goods are packed in materials normally used in the trade for packing such goods and provided further that the packing was not suitable for repeated use. In accordance with this notification, the petitioners claimed deduction on account of packing charges in respect of a consignment of 500 Metric Tonnes of PVC Resin covered by Bill of

Entry Cash No. 4005, dated June 16, 1982. The Customs authorities permitted the petitioners to deduct the packing charges at the rate of U.S. Dollars 25 per metric tonne from the assessable value of the PVC Resin. The Customs Officer provisionally assessed the consignment for duty after excluding packing charges and the petitioners were allowed to clear the consignment on the lower assessable value and upon furnishing a Bank Guarantee for an amount being the differential duty which would be payable if the duty was calculated without deducting the cost of packing from the assessable value of the consignment of PVC Resin. The petitioners also imported another consignment of 500 Metric Tonnes of PVC Resin and the copy of the Invoice dated June 29, 1982 clearly stated that the C.I.F. price for the consignment was at the rate of U.S. Dollars 510 per Metric Tonne and the packing charges were at the rate of U.S. Dollars 25 per Metric Tonne. The petitioners also produced the certificate issued by the South Korean Suppliers certifying that the packing charges were included in the Invoice at the rate of U.S. Dollars 25 per Metric Tonne. The petitioners duly filed a Bill of Entry in respect of the consignment and claimed that the Customs Duty and the Additional Duty should be calculated by deducting the cost of packing at the rate of U.S. Dollars 25 per Metric Tonne. The petitioners also sent a copy of the judgment delivered by this Court on October 15, 1981 in Miscellaneous Petition No. 1099 of 1978 Kirloskar Cummins Limited Vs. Union of India and Three others, in support of the claim. The Assistant Collector of Customs ignoring the judgment of this Court passed the impugned order dated August 9, 1982 and rejected the contention that the cost of the packing should be excluded from the assessable value while computing the duty and additional duty. The order passed by the Respondent No. 2 is under challenge.

3. Shri Setalvad, learned counsel appearing in support of the petition, submitted that the impugned order is clearly illegal as the Assistant Collector of Customs has ignored the judgment of this Court in Miscellaneous Petition No. 1099 of 1978. The learned counsel submitted that the Assistant Collector has taken a view which is wholly contrary to the decision of this Court. Shri Setalvad points out that the decision of the Single Judge was carried in appeal by the Department but the appeal ended in summary dismissal. Shri Mehta, learned counsel appearing on behalf of the respondents, could not dispute that the points in controversy stand concluded by the decision of this Court. The Assistant Collector has made certain observations in the order which, I must express my inability, are difficult to follow. The order passed by the Assistant Collector, in these circumstances, cannot be sustained and deserves to be quashed.

4. Accordingly, the rule is made absolute in terms of prayer (b) of the petition. The relief in terms of prayer (b)(iii) is granted on condition that the consignment imported by the petitioners is of PVC Resin and provided that the packing is of the same type and the exemption notification dated August 2, 1976 is in force at the time of importing of the consignment. The respondents shall pay the costs of the petition. The Bank Guarantee and the bonds furnished by the petitioners in accordance with the interim order passed by this Court stand discharged.

