(1986) 01 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 750 of 1984

Gujarat Detergent Manufacturers Association APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Customs Act, 1962 — Section 25(1)

Citation : (1988) 19 ECR 228 : (1988) 38 ELT 447

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

Bench : Single Bench

Judgement

1. The petitioners are an association of Small Scale Industries Units and are engaged in the manufacture of detergent washing powder and Acid Slurry. The raw material required for manufacture of detergent washing powder includes ''Linear Alkyl Benzene'' and ''Dodecyl Benzene''. Both these products are canalised through State Trading Corporation. The State Trading Corporation enters into various contracts with foreign suppliers for the purchase of Linear Alkyl Benzene. The actual users of the products are required to register their requirements with the State Trading Corporation and when the vessels carrying the items are about to arrive, the Corporation gives information to the actual users requiring to complete the formalities and clear the material. The petitioners accordingly registered their requirement with the State Trading Corporation for the period April 1983 to March 1984. On April 4, 1984 the Corporation informed the petitioners of the arrival of the vessel and allotment of certain quantity of Linear Alkyl Benzene to the petitioners.

2. In exercise of the powers conferred under sub-section (1) of Section 25 of the Customs Act, 1962 the Central Government issued Notification dated March 1, 1983, inter alia, exempting the goods falling under the sub-heading No. 38.01/19 when imported into India from so much of the payment of duty of customs leviable thereon which is specified in the First Schedule, as is in excess of the amount calculated at the rate specified in Column (3) of the Table. The

relevant entry in the exemption notification reads as under :

2. Nothing contained in this notification shall apply to Dodecyl Benzene.

Tariff Item No. 38.01/19 and Sub-heading (1) thereof reads as under :

"Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included :

(1) Not elsewhere specified 100%."

3. It is the claim of the petitioners that in view of the Notification dated March 1, 1983 duty on the Linear Alkyl Benzene has been exempted from duty in excess of 70% ad valorem. The petitioners complain that the respondents took an erroneous stand that the import of Linear Alkyl Benzene would not be entitled to the benefit of exemption notification and insisted on payment of 100% duty on a wrong assumption that Linear Alkyl Benzene is not different from Dodecyl Benzene. Shri Andhyarujina, learned counsel appearing on behalf of the petitioners, submitted that the perusal of the relevant import policy, trade usage, chemical characteristics and commercial meaning would establish beyond any doubt that the two products are separate. The learned counsel urged that the Notification dated March 1, 1983 specifically prescribes that the advantage of the notification would not be available for import of Dodecyl Benzene only. The submission of the learned counsel is correct and deserves acceptance. Item 24 in Appendix 8 of the relevant import policy reads as under :

"Alkyl Benzene including Linear Alkyl Benzene/Dodecyl Benzene".

The entry makes it clear that the two items Alkyl Benzene and Dodecyl Benzene are different and distinct. This position also becomes clear by perusal of the Item B. 3.5 of Appendix 17 of the Import Policy and so also Item B. 20.3 and B. 20.7 of Appendix 17. Shri Andhyarujina submits that apart from the overwhelming evidence to indicate that the two products are not the same, that fact has already been recognised by the Government of India by publishing Notification dated June 12, 1984, clarifying that the two products are different. This notification prescribes that the explanation set out below shall be inserted in the original notification dated March 1, 1983. The explanation reads as under :

"Explanation :- For the purpose of this notification, ''Dodecyl Benzene'' shall mean ''branched chain Alkylate Benzene'' also popularly known as ''hard alkylates'', but shall not include Linear Alkyl Benzene (LAB) popularly known as Soft Alkylate".

In view of this notification which was issued by the Government after filing of the petition, there cannot be any manner of doubt that the product Linear Alkyl Benzene is different from Dodecyl Benzene.

4. Shri Deodhar, learned counsel appearing on behalf of the Department, urged

that the Explanation inserted by the Notification dated June 12, 1984 would have application to the import of items subsequent to that date and would have no application to the import effected earlier. The submission is only required to be stated to be rejected. The explanation was included in the original exemption notification with a view to clarify the position which was known to everyone before hand. The advantage of the exemption notification could not be denied to the petitioners. In my judgment, the action of the respondents in denying the benefit of the exemption notification was wholly unsustainable and the petitioners are entitled to the relief sought.

5. Accordingly, petition succeeds and the rule is made absolute in terms of the prayers (b)(i) and this relief is available as long as Notification dated March 1, 1983 remains in operation. The respondents shall pay costs of the petitioners.