(2002) 03 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No''s. 3332 and 3333 of 1988

Hasmukhlal Jayantilal Doshi APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 112

Citation : (2002) 143 ELT 526

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : H.R. Shetty, for the Appellant; A.J. Rana, R.V. Desai and S.V. Bharucha, instructed by H.D. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—These writ petitions are directed against the order passed by the Collector of Customs, Bombay, challenging confiscation of goods in exercise of powers u/s 122 read with Section 111(a) of the Customs Act, 1962 (Act for short), giving an option to the petitioners/importers u/s 125 of the Act to pay fine and penalty in lieu of confiscation.

2. Petitions are different but the issue involved is identical based on common facts. So a single judgment will dispose of both these petitions.

Facts in brief:

3. The facts necessary to appreciate the rival contentions have been drawn from Writ Petition No. 3332 of 1988. These are as under :-

The petitioner imported the Sodium Saccharine vide Invoice No. CAD-XB-0179C-01 from Lucky Goldstar International Corporation, Korea under Bill of Entry bearing No. 011993, Rotation No. 2783 for home consumption.

The petitioner claimed clearance under import licence against export product--

bicycle components and accessory materials.

The petitioner claimed that Sodium Saccharine is deemed to be the Electroplating Salts and brighteners. The Customs Department refused to accept that Sodium Saccharine can be treated as Electroplating Salts and brighteners. The Collector of Customs, Mumbai on 12-5-1987 passed an order confiscating goods and imposed redemption fine of Rs. 3,60,000/- and penalty of Rs. 50,000/- for each Bill of Entry.

Submissions

4. A short submission of the petitioners in both the petitions is that at the time of import they were holding import licence to import electroplating salts and brighteners. Sodium Saccharine is nothing but property containing electroplating salts and brighteners, as such, the import was well within the terms of Licence conditions. Petitioners pressed into service the judgment of the CEGAT in the matter of 1988 (38) ELT 339 and prayed that the contention raised therein be treated as their submission. Petitioners also relied upon Public Notice No. 9-10-1986 issued by the Joint CCI & E. Serial No. 24, Page 60, wherein Sodium Saccharine was not excluded from the electroplating salts and brighteners, while specifically excluding Sodium cyanide. Submission is that Sodium Saccharine is nothing but electroplating salts and brighteners as it contains the same property. The learned Counsel for the petitioners submitted that the public notice specifically excluded Sodium Cyanide, as such, intention of the respondent was to exclude Sodium Cyanide but not Sodium Saccharine. Had it been so, sodium Saccharine would also have been specifically excluded in the public notice. Since Sodium Saccharine has not been excluded, the same can be categorically treated as electroplating salts and brighteners.

5. The learned Counsel for the respondents opposed this petition and controverted all the submissions advanced on behalf of the petitioner on merits. He also brought to our notice that the very same petitioner had filed Writ Petition No. 109 of 1997 Hasmukhlal Jayantilal Doshi v. Union of India and Ors. challenging the action of the respondents in not allowing clearance of goods imported by the petitioner for home consumption under various Bills of Entry. In the earlier petition, same contentions were advanced which have been reiterated in the present petition. One of the contentions advanced was Sodium Saccharine was nothing but electroplating salts and brighteners. This contention has been repelled by this Court in the following words :

"Admittedly Sodium Saccharine is mentioned as a separate item and in such case it cannot be deemed to be included in Electroplating salts and Bright-eners, though conceivably it may be such an item."

The findings recorded by this Court in the case of the petitioner in Writ Petition No. 3332 of 1988 having become final and conclusive for want of further challenge at the instance of the petitioner, will certainly operate as res judicata against the petitioner in Writ Petition No. 3332/1988.

6. So far as Writ Petition No. 3333 of 1988 Navinchandra Premji & Co. v. Union of India is concerned, as already observed hereinabove, identical issue based on similar facts and grounds of attack is involved as such, this petition was ordered to be heard with Writ Petition No. 3332 of 1988. However, in this petition doctrine of res judicata will not be applicable. Consequently, we have independently examined the contentions raised by the petitioner in this petition and after having examined the issue afresh, we do not see any reason to differ from the view taken by this Court in 1988 (38) ELT 339 (T) vide its Order, dated 2-2-1987. Consequently, we hold that Sodium Saccharine is a separate item by itself and cannot be deemed to be included in electroplating salts and brighteners. Sodium Saccharine is not used as one of the brighteners as contended by the petitioner pursuant to the import policy quoted by the petitioner. The import licence did not cover importation of saccharine, but covered only item described as electroplating salts and brighteners. As such, we are unable to accept the contention advanced by the petitioner in this behalf.

For the reasons stated hereinabove, we dismiss both these petitions holding them to be without any substance. Rule stands discharged in both petitions with no order as to costs.