

(1986) 01 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 6706 of 1979

Hegde and Golay Ltd.

APPELLANT

Vs

Collector of Central Excise and Customs

RESPONDENT

Date of Decision : 02-01-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8 (1)
Customs Act, 1962 — Section 25
Customs Tariff Act, 1975 — Section 3, 3 (1)

Citation : (1987) ILR (Kar) 604

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : G. Sarangan and J.N.S. Prasad, for the Appellant; Shivashankar Bhat, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajasekhara Murthy, J.—The petitioner-Company, which is a manufacturer of watch as, imported certain components for the purpose of manufacture of watches in its factory.

2. The Collector of Customs and Central Excise, Bangalore levied additional duty or counter-veiling duty on the watch components so imported by the petitioner u/s 3 of the Customs Tariff Act, 1975. This levy is challenged by the petitioner in this Writ Petition.

3. The petitioner, relying upon the Notification 240/78/ Cus., Annexure-C, has urged that the levy of additional duty u/s 3 of the Customs Tariff Act is without authority of law and has prayed for a consequential order of refund of the duty so paid and collected.

The petitioner has also relied upon Notification 178/77 issued under Rule 8 (1) of the Central Excise Rules, which is superseded by Notification 201/79.

4. The Writ Petition is resisted on behalf of the Revenue by Sri Shivashankar Bhat

that the Writ Petition filed with-out exhausting alternative remedy under the Act should be dismissed in limine.

However, since I have heard arguments on merits and the Writ Petition is of the year 1979, I propose to dispose of the Writ Petition on its merits.

5. Additional duty known as counter-veiling duty equal to excise duty leviable on a like article if produced or manufactured in India, is levied u/s 3 of the Customs Tariff Act on any article imported.

Section 3 reads thus:-

"3. Levy of additional duty equal to excise duty.- (1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at the percentage of the value of the imported article".

6. The charging Section under the Customs Tariff Act is Section 3. This is to be read along with Section 25 of the Customs Act, 1962, under which the Central Government may exempt from the whole or any part of the Customs duty leviable on any goods.

The Notification No. 240/78 dated 30th December, 1978, which is produced as Ext. "C", to the petition is a notification issued u/s 25 which exempts the wrist watches and wrist watch parts from so much of that portion of the duty or customs leviable thereon as specified in the first schedule to the Act as is in excess of 50% advalorem. This notification which is relied upon by the petitioner is not relevant for the purpose of deciding whether the components of watch parts imported by the petitioner could be exempted from the levy of additional duty u/s 3 of the Customs Tariff Act.

7. This argument is countered by the learned Counsel for the respondents that the component parts imported by the petitioner--Company, are not eligible for exemption under Notification 118/75. According to his submission, only the components manufactured in a factory and intended for use in the same factory in which the finished products are manufactured, are eligible for exemption from the whole of the excise duty.

The watch components which are imported by the petitioner-Company are not the component parts refund to in the Notification No. 118 of 1975, and are therefore not eligible for exemption.

It is also opposed on the ground that the claim of the petitioner is too far fetched and has no relevance and do not satisfy the terms of the exemption as mentioned in Notification No. 118/75.

8. The petitioner has in support of his contention relied upon the decision of the

Bombay High Court in the case of Century Enka Ltd. and Ors. v. Union of India, 1982 ELT 64 (Bombay). Their Lordships of the Bombay High Court have held, that the polyamide chips imported by the petitioner company would be eligible for exemption from the payment of counter-veiling duty.

According to the Bombay High Court, polyamide chips, if used in the manufacture of Nylon polymer yarn, would be entitled to exemption from the whole of the excise duty leviable even if they are imported. The only test according to their Lordships is, if a like article manufactured in India is exempt from levy of duty, the same exemption is to be applied even if the article is imported. It was, therefore held, that no countervailing duty in respect of polyamide chips imported by it could be levied.

Sri Shivashankar Bhat, learned Senior Standing Counsel for the Central Government has argued that the decision of the Bombay High Court does not lay down the correct law and has relied upon a decision of the Delhi High Court in Kandelwal Metal and Engineering Works v. Union of India, 1983 ELT 292 (Delhi)

Their Lordships hold that the petitioners were not entitled to exemption from payment of countervailing duty on the copper scrap imported by them even though they had used the same in the manufacture of copper alloys. It is also brought to my notice that the said Judgment has been affirmed by the Supreme Court of India on an appeal filed by the petitioners, which is reported in Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, It is relevant to extract the relevant observation from the said Judgment:-

"It cannot be said that Section 3(1) of the Tariff Act is not attracted in case of import of brass scrap merely because the damaged articles, which are in the nature of brass scrap, are outside the scope of that Act since, such articles are not and cannot be produced or manufactured. The duty referred to in Section 3(1) of the Tariff Act does not bear any nexus with the nature and quality of the goods imported into India."

XX XX XX XX "Section 3(1) of the Tariff Act, 1975 provides as a measure of additional duty, which has to be equal to the excise duty" leviable on a like article if produced or manufactured in India, as defined in the Explanation to that Section. The measure of a tax or duty cannot determine its nature or character. The brass scrap which is imported into India by the importers of the brass scrap is liable to the levy of additional duty mentioned in Section 3(1) of the Tariff Act, 1975 because, the taxable event is the import of the goods into India and not their manufacture. The duty referred to in Section 3(1) of the Tariff Act, 1975 is, therefore, leviable even if the goods imported into India are not in fact manufactured in India. The expression "excise duty for the time being leviable on a like article if produced or manufactured in India", which occurs in Section 3(1) of the Tariff Act, 1975 means excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like

article is not so produced or manufactured which would be leviable on the class or description of articles to which the imported article belongs."

9. In view of the clear enunciation by the Supreme Court as to the interpretation of the provisions of Section 3 of the Customs Tariff Act, the Petition should fail. As laid down by the Supreme Court what is enacted in Section 3 is only the rate or the measure of the excise duty leviable on a like article, if produced or manufactured in India.

Shri Shivashankar Bhat has argued that similar components, if produced by any other manufacturer within India and supplied to the manufacturing company like the petitioner, it would, without any doubt, be exigible to duty under the Central Excise Act.

Therefore, in his submission it should not make any difference if the components are imported from outside India are used in the manufacture of watches by the petitioner-Company.

The Supreme Court's decision in Khandelwal's case is a complete answer to the petitioner's contention.

The Notification No. 118/75 issued under the Central Excise Act, which is relied upon by the petitioner has absolutely no relevance for the purpose of the petitioner's case. The terms of the said Notification are unambiguous and are meant only for extending the exemption in respect of the goods manufactured in a factory and intended for use in the same factory in which the finished products are manufactured

10. In this view of the matter, there is no substance in the petitioners' case and it is accordingly dismissed.