(1993) 06 CAL CK 0015

In the Calcutta High Court

Case No : Matter No. ...

Honey Traders APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 24-06-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1994) 46 ECC 201 : (1994) 53 ECR 504 : (1995) 79 ELT 398

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

Ruma Pal, J.—The question which arises for decision in this proceeding is whether sawn wood is processed timber.

2. The question arises in connection with the export of sawn timber by the petitioner to Nepal. The petitioner says that he was assured in early 1993 by the Office of the Collector of Customs (Preventive) at Calcutta that there was no restriction on the export of sawn wood from India to Nepal. On 7-3-1993 the Superintendent of Customs wrote to the petitioner stating that he had been directed to inform the petitioner that the Deputy Collector of Customs (Preventive), West Bengal, Calcutta had been pleased to allow that petitioner to carry sawn wood processed in different shapes and sizes from India to Nepal through Panitanki L.C. station after observing necessary formalities. According to the petitioner, relying upon this assurance he entered into an agreement with a purchaser in Nepal for supply of 2000 cubic metres of sawn wood planks in sizes of 6 inches x 4 inches x 6 ft. The agreement provides that failure to supply the planks within four months from the date of the agreement would entail penal consequences. The petitioner obtained the sawn wood planks and sent them on trucks to Nepal through Panitanki L.C. On 30th March, 1993 the trucks were stopped at Panitanki at the instance of the Assistant Collector of Customs (Preventive), Naxalbari, Siliguri (being the respondent No. 4) on the ground that the export of wood was not allowed in terms of the Export and Import Policy of

the country.

3. The petitioner then filed this writ petition challenging the refusal of the respondent-authorities to permit the export of the sawn wood planks. The petitioner has contended that the Export and Import Policy prohibited the export of wood and wood products in the form of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp and charcoal. It is submitted that sawn woods planks did not come within this prohibition. Reference has also been made to Chapter XVI, Part V of the Export and Import Policy which allows for the export of "processed timber of all species excluding sandalwood and red sanders wood" without a licence but subject to terms and conditions specified in this behalf. It is contended that sawn timber was processed timber and therefore, could be exported without a licence.

4. The petitioner then contended that a definite representation had been made to the petitioner by the respondent-authorities acting on the basis whereof the petitioner had taken steps to his detriment. He had purchased the logs and had entered into an agreement which, if not fulfilled, would render him liable to penal consequences. It is submitted that the respondents were estopped from refusing to allow the petitioner to export sawn timber.

5. It was finally contended by the petitioner that the Indo-Nepal Treaties of Trade, Transit, 1991 provided that the Government of India and Nepal would, on reciprocal basis, exempt from basic customs duties as well as quantitative restrictions, the import of such primary products as may be mutually agreed upon from each other. The protocol to the treaty includes timber as a primary product eligible for preferential treatment. It is contended that the treaty was binding on the respondent-authorities as government servants and they could not act in contravention thereof by refusing to allow the export of timber.

6. The respondents have contended that under Chapter XVI, Part I of the Export and Import Policy (1-4-92 - 31-3-1997) timber was included in the negative list of exports. It is contended that only processed timber could be exported without licence and that sawn timber was not processed timber. According to the respondents, processed timber would mean manufactured products out of timber and/or finished or semi-finished products for furniture, doors, windows, etc. It is argued that under excise laws sawn timber was treated as timber, and that the sawing of timber was held by the judicial authority not to amount to a manufacturing process. Reliance has been placed on the decisions in Y. Moideen Kunhi and Others Vs. Collector of Central Excise, Bangalore and Others, ; 1984 ECR 726 and Collector of Central Excise, Madras Vs. Kutty Flush Doors and Furniture Co. (P) Ltd., .

7. As far as the letter of the Duputy Collector is concerned, it is stated by the respondents that there could be no estoppel against any statutory provision and that in any event what the Deputy Collector meant was manufactured products and not sawn timber. Finally it is submitted in this respect that if the letter is

construed as a permission, such permission was granted under mistake as it would be in contravention of the Export and Import Policy.

8. The submission of the petitioner relating to the treaty between the products of India and Nepal has been sought to be countered by the respondents by stating that the treaty was in 1991 whereas the Export Policy was formulated in 1992, and that it was not argued by the petitioner that the treaty overrode local laws.

9. In my view, the petitioner is entitled to succeed in this application on the basis of his first submission.

10. Chapter XVI, Part I of the Export and Import Policy contains categories of items which are prohibited and may not be exported at all. Item of the list of prohibited items reads as follows :

"7. Wood and wood products in the form of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp and charcoal."

11. There is no specific mention of planks in the description of the items. Chapter XVI, Part V of the Policy provides for items which may be exported without a licence but subject to terms and conditions specified in this behalf. Item 44 of the list of such exportable items reads as follows :

"44. Processed timber of all species excluding sandalwood and red Sanders wood."

12. In other words, an exception has been carved out from the prohibition under Chapter XVI, Part I, Item 7, so that although wooden planks may be timber (as held in the decisions cited by the respondents) the question is whether wooden planks are processed timber within the meaning of Serial No. 44, Chapter XVI, Part V.

13. The respondents'' submission that the sawing of timber is not processing of timber and that processed timber means products manufactured out of timber is based upon the definition of "manufacture" in the Central Excises and Salt Act, 1944. According to Section 2(f) of the Central Excises and Salt Act :

" ''Manufacture'' includes any process -

(i) incidental or ancillary to the completion of manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture."

14. To manufacture a thing means to bring into being something which is useful for its own sake and vendible as such the essential element being the production of a known substance, while goods which are processed need not necessarily bring into being a new vendible product. There is no justification for limiting the word "processed" in Chapter XVI, Part V, Item 44 of the Export and Import Policy to mean "manufactured".

15. The definition equates manufacture with only those processes which result in manufacture. In other words, those processes which bring into being a new commodity would be included within the definition of manufacture. Therefore, manufacture cannot be equated with all processes.

16. This position has been recognised by the Supreme Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, :

"According to the learned Counsel ''manufacture'' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate ''processing'' to ''manufacture'' and for this we can find no warrant in law. The word ''manufacture'' used as a verb is generally understood to mean as ''bringing into existence a new substance'' and does not mean merely, ''to produce some change in a substance'', however minor in consequence the change may be."

(Emphasis mine) (Here italicised).

Again at page 795 the Supreme Court said :

"Mere ''processing'' as distinct from ''manufacture'' in the sense of bringing into existence of a new substance known to the market, liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word ''manufacture'' has been used to mean a process incidental to the manufacture of the articles."

17. The decisions cited by the respondents only hold that by cutting timber into planks no new commodity came into being for the purposes of the Excise Act. This does not mean that the timber was not processed. The decisions are therefore distinguished.

18. The word "process" connotes a substantial measure of uniformity of treatment, a continuous and regular action carried on in a definite manner. [See: Vibro Plant v. Holland 1982 (1) All ER 792].

19. Applying this definition, a processed product would mean a product which has been subjected to treatment carried on in a regular and definite manner. It is not disputed that the timber in this case has been subject to treatment by being cut and changed into regular shapes.

20. I, therefore, hold that sawn planks is processed timber within the meaning of Chapter XVI, Part V, Item 44 of the Export and Import Policy, (from 1st April, 1992 to 31st March, 1997) and is an exportable item subject to such terms and conditions as may be specified in this behalf in the Hand-book of Procedures. Having held this it is not necessary to consider the other submissions of the petitioner.

21. The writ application therefore succeeds. The respondents are directed to allow the petitioner to export the sawn wood planks which are the subject-matter of this petition subject to the petitioner complying with the terms and conditions

as may be applicable under the Export and Import Policy (1992-1997).

22. There will be no order as to costs.

Let xerox copies of this order be made available to the learned Advocates for both the parties on the usual undertakings.

