

(1988) 07 BOM CK 0076

In the Bombay High Court

Case No : Appeal No. 1056 of 1987 in Writ Petition No. 2755 of 1982

Indian Lead Private Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1989) 19 ECC 209 : (1989) 23 ECR 561 : (1988) 38 ELT 23

Hon'ble Judges : B. Lentin, J; Ashok Agarwal, J

Bench : Division Bench

Judgement

Agarwal, J.—The short point that arises for determination in this appeal relates to the construction of the Notification No. 33/81, dated the 1st March 1981 issued under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. A few facts which have given rise to the filing of the present appeal may be stated.

2. The appellants who are the original petitioners are manufacturers of lead products. In the course of their business, the appellants imported large quantities of lead scrap consisting of whole drained scrap batteries, battery plate scrap and cable lead scrap. By the present Notification dated the 1st of March 1981 the Central Government in exercise of its powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 exempted from duty of excise waste and scrap of copper, zinc, aluminium and lead as detailed in the said Notification. During the period 1st March 1981 and 4th of November 1981 the appellants imported various consignments of the above-mentioned lead scrap. The appellants had made several payments towards excise duty under protest. Various applications for refund made by the appellants were rejected by the Assistant Collector on the ground that the said Notification was not applicable. Appeals against the said orders were dismissed by the appellate authority and this led to the filing of the petition being Writ Petition No. 2755 of 1982.

3. By judgment and order dated the 3rd March 1987, the learned Single Judge concurred with the view take by the Customs Authorities in that the case of the

appellants was not covered by the said Notification. Consequently the petition was dismissed with costs. Being aggrieved by the said order, the appellants have preferred the present appeal.

4. Mr. Talyarkhan, the learned Counsel appearing in support of the appeal has contended that on a proper construction of the said Notification, the case of the appellants would squarely fall within Clause (b) of that Notification and the appellants would be exempt from payment of excise duty on the scrap of lead imported by the appellants. According to Mr. Talyarkhan, Clause (a) and Clause (b) of the said Notification had to be read disjunctively in view of the word "or" which has been used in between the said two clauses. On a proper construction of the said notification the import of scrap lead was eligible for exemption from payment of excise duty. If no duty was payable, no countervailing duty could be charged on the said imports.

5. It may be convenient to reproduce the Notification for considering its proper construction.

"Exemptions to waste or scrap of copper, zinc, aluminium and lead. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts waste and scrap of copper, zinc, aluminium and lead, falling under Item Numbers 26A, 26B, 27 and 27A, respectively, of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon subject to condition that :-

(a) such waste and scrap are manufactured from copper, zinc, aluminium or lead, falling under the Item Nos. 26A, 26B, 27 and 27A, respectively, of the said First Schedule on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been paid; or -

(b) such waste and scrap arise from products falling under any item Numbers of the said First Schedule other than Item Numbers 26A, 26B, 27 and 27A manufactured from the said copper, zinc, aluminium or lead."

In our judgment, a plain reading of this Notification would show that what is sought to be exempt from excise duty is waste or scrap of copper, zinc, aluminium and lead. Clause (a) of the said Notification provides that in respect of waste and scrap manufactured from copper, zinc, aluminium or lead falling under Item Nos. 26A, 27 and 27A, the exemption was available if appropriate amount of duty of excise has already been paid. Clause (b) of the said Notification deals with the above products viz. waste and scrap of copper, zinc, aluminium and lead not falling under Item Nos. 26A, 26B, 27 and 27A and these products are given exemption whether or not the appropriate amount of duty has already been paid. This is apparent from the fact that unlike in clause (a), no provision is made in clause (b) of payment of additional duty. Clauses (a) and (b) are distinct and disjunctive and one clause cannot be read into the other.

6. The language of clauses (a) and (b) is different. Clauses (a) and (b) are complete by themselves and are disjunctive in nature. This is apparent from the use of the word "or" appearing between the two clauses.

6A. The term "said" appearing in clause (b) does not specify copper, zinc, aluminium or lead of the type stated in clause (a) but the nature of copper, zinc, aluminium or lead appearing in the opening part of the notification. The words "such waste and scrap" appearing in clauses (a) and (b) are disjunctive and each set of such words, namely "such waste and scrap" contemplate the "waste or scrap" appearing in the opening part of the notification namely "Exemption to waste or scrap of copper, zinc, aluminium and lead". This would be the plain reading of the said notification. Any other construction would render the word "or" appearing in between clauses (a) and (b) meaningless.

6B. Since the appellants have imported scrap of lead falling under Item 31 of the First Schedule, their case would fall under Clause (b) entitling them to the exemption claimed.

6C. Mr. Shringarpure, the learned Counsel appearing on behalf of the respondents on adopting the reasons that commended themselves to the learned Single Judge contended that the phrase "the said copper, zinc, aluminium or lead" occurring in Clause (b) would signify that the said articles would be such on which appropriate amount of duty has already been paid as contemplated in Clause (a). He emphasized as has been done by the learned Single Judge, that the use of the words "the said", indicates reference to lead of the sort already referred to in the said Notification. The reference is to the sort of lead referred to in Clause (a) thereof. This is lead which falls under the specified items of the First Schedule and on which the appropriate amount of duty of excise, or as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) has already been paid".

7. Having given our anxious consideration to the reasoning adopted by the learned Single Judge and also the submissions advanced by Shri Shringarpure, we are of the view that there is no justification for importing in Clause (b), on account of the use of the words "the said", what has been provided in clause (a) namely "on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been paid".

8. In our judgment, on a plain reading of the aforesaid Notification what has been exempt from the excise duty are waste and scrap of copper, zinc, aluminium and lead. What Clause (a) provides is if the said product falls under Item Nos. 26A, 26B, 27 and 27A of the First Schedule the same would become entitled for exemption provided appropriate amount of duty of excise or as the case may be, the additional duty livable u/s 3 of the Customs Tariff Act has already been paid. Under Clause (b) what has been provided is that the aforesaid products which do not fall under Item Nos. 26A, 26B, 27 and 27A of the First

Schedule would be exempt from excise duty irrespective whether excise duty thereon has been paid or not. If the products contemplated under Clause (b) were to qualify the further requirement of duty already having been paid, the said object could as well have been achieved by deleting Clause (b) altogether and retaining earlier part of the Notification by deleting the Clause :-

"..... falling under Item Nos. 26A, 26B, 27 and 27A respectively, of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon subject to condition that :-

(a) such waste and scrap are manufactured from copper, zinc, aluminium or lead, falling under the Item Nos. 26A, 26B, 27 and 27A respectively of the said First Schedule....."

The Notification by the aforesaid deletion would have made the following simple reading :-

"Exemptions to waste or scrap of copper, zinc, aluminium and lead. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts waste and scrap of copper, zinc, aluminium and lead, on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been paid."

The object of achieving what Mr. Shringarpure seeks to put on the notification could well have been achieved by adding the requirement of the appropriate amount of duty having been already paid in clause (b). In our judgment, the learned Single Judge was not justified in importing in Clause (b) by virtue of the user of the words "the said", the requirement of the amounts of duty having already been paid as contemplated in clause (a).

9. Further, the submission of Mr. Shringarpure which proceeded on the intendment of the legislation cannot be acceded to. The operation of the Notifications has to be judged not by the object which the rule-making authority had in mind, but by the words which it has employed to effectuate the legislative intent. It is well established that in a taxing statute there is no room for any intendment. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. [Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others,]. In this view of the matter, we are of the view that the appellants would be entitled to the refund of the excise duty as prayed for.

10. Before parting, we must make a reference to an alternative submission advanced by Mr. Talyarkhan viz. that the lead scrap imported by the appellants arose from obsolete goods. The said goods were not manufactured and hence, not liable to payment of excise duty. However, in view of the decision of the

Supreme Court in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, to which a reference was, in all fairness made by Mr. Talyarkhan, the said contention was not pressed before us.

11. In view of our finding on the earlier issue, the appeal is allowed. The impugned judgment and order of the learned Single Judge is set aside. Writ Petition No. 2755 of 1982 is restored to file. Rule is made absolute in terms of prayers (a) and (b) save and except that the interest payable will be at 12% per annum in place of 18% per annum prayed for in prayer Clause (b). The Department to make payment of refund along with interest within a period of eight weeks from today.

12. No order as to costs throughout.