

(1987) 07 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 484 of 1982

Indian Lead Private Ltd. and another	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 24-07-1987

Acts Referred:

Customs Tariff Act, 1975 — Section 3(1)

Citation : (1988) 16 ECC 162 : (1987) 31 ELT 688

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners imported, between December 1981 and February 1982, certain items of drained battery scrap and battery plate scrap all being lead scrap. The petitioners had to pay an additional duty u/s 3(1) of the Customs Tariff Act and that has been challenged on two grounds.

2. The first ground is that the lead scrap which the petitioners had imported here could not be said to be manufactured in India and, therefore no countervailing duty could have been charged. This contention has been expressly negatived by the Supreme Court in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, . Having regard to this judgment, obviously, this contention that the lead scrap imported by them is not produced or manufactured in India and that, therefore, no duty could have been charged on that, is not sustainable at all.

3. The other contention is that at the material time there was an exemption notification issued under Rule 8(1) of the Central Excise Rules. The notification was issued on March 1, 1981 and the notification exempted "waste and scrap of copper, zinc, aluminium and lead, falling under Item Number 26A, 26B, 27 and 27A respectively of the First Schedule to the Central Excises and Salt Act, 1944 (1 to 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 item Numbers 26A, 27B, 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 Number of the said First Schedule other than Item Number 26A, 26B, 27 and 27A manufactured from the said copper, zinc, aluminium or lead." Mr. Talyarkhan submitted that the scarp which the petitioners have imported being battery scrap could be said to have arisen from battery and parts thereof falling under Item No. 31 of the Tariff. He, therefore, submitted that in that event he would be satisfying condition (b) as imposed under this exemption notification, inasmuch as the petitioners' scrap can be said to have arisen from products not falling under Items 26A, 26B, 27 and 27A, but could be considered as arising from item falling under item No. 31.

4. However, Mr. Talyarkhan pointed out that similar contention advanced by him in writ petition No. 2755 of 1982 was negatived by Bharucha, J., by his order dated March 3, 1987. In that order the learned Judge observes as follows :

"The lead scrap which is imported by the petitioners does not arise from lead products upon which excise duty or additional duty has been paid. It does not, therefore, qualify for exemption under the said notification. Mr. Talyarkhan, learned counsel, for the petitioners, was not, I think, right in suggesting that "the said..... lead" mentioned in Clause (b) of the said notification was only lead that fell under the items of the First Schedule specified in Clause (a) thereof. Clause (a) provides two requirements; one regarding the specified items and the other regarding the payment of excise or additional duty. Both requirements must be complied with before lead can be "the said lead" under the said notification".

Though, in my view, it is possible for the Court to take a different view what the learned Judge has taken, and though I was invited to do so by Mr. Talyarkhan and refer the matter to the Chief Justice for placing it before the Division Bench, I would not do so, inasmuch as, judicial discipline demands that one Judge should not differ from the other unless the difference is distinct and clear. Unfortunately, for me, I do not have the benefit of the arguments on the part of Government as to how the learned Judge was persuaded to take the view that he has taken.

5. In the result, I will be able to grant any relief to the petitioners, and, I therefore, pass the following order :

The petition fails and the rule is discharged.

However, in the circumstances of the case, there will be no order as to costs.