(1991) 07 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2791 of 1983

Indian Organic Chemicals Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:

Citation : (1992) ECR 171 : (1991) 56 ELT 54

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri N.A. Dalvi, i/s., M/s. Matubhai Jamiatram, for the Appellant; Shri Pradeep Jetly, for the Respondent

Judgement

Pendse, J.—The controversy in this petition stands concluded by decisions of two Division Benches of this Court. To appreciate the controversy, it is necessary to set out few facts.

2. Petitioner No. 1 is a Company incorporated under the Companies Act and carries on business in imports of various chemicals and other materials. The Company imported 499.998 Metric Tonnes of 2-Ethylhexanol (Octanol) from the foreign suppliers. The Company filed Bills of Entry for clearance on November 8, 1983 on arrival of the goods. The petitioners claim that while computing the customs duty it is not permissible to include expenses incurred after import of the goods. The goods were liable to be classified under the Customs Tariff Item No. 2901/45 and there was no dispute in respect of basic customs duty and the auxiliary duty. The customs authorities insisted on determinating the additional duty by including customs duty while determining the assessable value. The petitioners feeling aggrieved by the action of the Department, filed the present petition under Article 226 of the Constitution of India on December 6, 1983.

3. The petition was admitted on December 8, 1983 and petitioners were permitted to clear the goods on furnishing bank guarantee in respect of claim of duty made by the customs authorities by loading the amount of customs duty

while calculating the assessable value for levy and collection of additional duty. Accordingly, in pursuance of the interim order the petitioners cleared the goods.

Before clearance of the goods the Company become aware that the imported goods is a kind or specified of alcohol and countervailing duty would not be leviable on such import. Accordingly, the Company moved the customs authorities not to levy countervailing duty before clearance of the goods. The customs authorities did not accept the claim and thereupon the petitioners cleared the goods after payment of countervailing duty. The Company then amended the petition and sought refund in respect of payment of countervailing duty of Rs. 3,02,779.40.

4. Shri Dalvi, learned Counsel appearing on behalf of the petitioners, submitted that the amount of customs duty cannot be included while calculating the assessable value for levy and collection of additional duty. The submission is not correct in view of the decision of the Division Bench of this Court reported in Ashok Traders Vs. Union of India and another, , land to which one of us (Pendse, J.) was a party. The second submission urged by the learned Counsel is that the levy of countervailing duty by the Department was clearly without authority of law. This submission deserves acceptance in view of the decision of Single Judge reported in Raman Kantilal Bhandari Vs. Union of India and others, , and which decision is confirmed by Division Bench in the decision reported in 1990 (29) ECC 152, Union of India and Others v. Raman Kantilal Bhandari. Shri Jetly, learned Counsel appearing on behalf of the Department did not dispute that in view of the decision of this Court in the case of Raman Kantilal the petitioners are entitled to the relief in regard to levy of countervailing duty, but urged that Circular dated February 6, 1987 issued by the Central Board of Excise and Customs and addressed to all Collectors was not brought to the attention of the Division Bench which delivered judgment reported in 1990 (29) ECC 152. Shri Jetly submits that in this circular the Board had clarified the exact ambit of the expression "alcohol-all sorts" appearing under erstwhile. Tariff Item 68. Shri Jetly submits that in view of the circular the decision of the Division Bench is not a good law. It is impossible to accede to the submission for more than one reason. In the first instance it is not known why the circular was not brought to the attention of the Division Bench although it was available right from 1987 onwards. Secondly, the circular cannot determine the ambit of the expression and clarificatory circular is obviously issued to overcome the judgment of the Single Judge of this Court, which was subsequently confirmed by the Division Bench. In our judgment, the respondents cannot resist the grant of relief in regard to refund of countervailing duty to the petitioners.

5. Accordingly, petition partly succeeds and the only relief which the petitioners are entitled to is refund of countervailing duty. The respondents are directed to verify the claim for refund and grant refund within a period of four weeks from today. It is open for the respondents to load customs duty while determining the assessable value for levy and collection of additional duty. The respondents are

at liberty to enforce the bank guarantee furnished by petitioners in pursuance of interim order, for realisation of duty which could not be recovered.

6. There will be no order as to costs.

