(1987) 07 AP CK 0009

In the Andhra Pradesh High Court

Indo-Finercil Private Limited APPELLANT

Vs

Government of India and Another RESPONDENT

Date of Decision : 18-07-1987

Acts Referred:
Customs Act, 1962 — Section 25, 3

Citation : (1989) 20 ECR 201 : (1988) 32 ELT 321

Hon'ble Judges : Rama Rao, J;A. Raghuvir, J

Bench : Division Bench

Judgement

Raghuvir, J.—The company by name ''Indo finercil Private Limited'' is the writ petitioner. The company is also register District where it manufactures ''pyrazinamide'' a drug used for ''Chemotherapy for Tuberculosis (TB)''. TB in India is at large for centuries. In the past three or four decades it is under control, yet four to five millions fresh cases of acute pulmonary TB are found every year affected by the killer disease. The bacillary remain contagious in the lungs of the affected for two years before death finally takes over the patient. There are five are : (1) Isonized (INH), (2) Rifampicin, (3) Pyrazinamide, (4) Streptomycin and (5) Ethambutal. the writ petitioner company uses the first three components in ''Pyrazinamide". Relevant to these components inter alia two notifications are referred by the company. Notification No. 18 of 1984 published on February 14, 9184. The other is 233 of 1984 published on September 12, 1984. The two were notified u/s 25 of the Customs Act, 1962. The Notification No. 18 recites; "... Central Government.... in the public interest so to do, hereby exempts Pyrazine Mono Carbolic Acid (PHCA), falling under Heading No. 29.01/45 of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India by actual users for the manufacture of anti- TB drug Pyrazinamide, from (i) so much of that portion of duty of customs leviable thereon which is specified in the first schedule as is in excess of the amount calculated at the rate of 60 per cent ad- valoram, and (ii) the whole of the additional duty leviable u/s 3 of the second mentioned Act." The Notification 18 was rescinded by No. 233 of 1984 published on September, 1984 which recites;

".... the Central Government....... in the public interest so to do, hereby rescinded the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 18/84 Customs, dated the 14th February, 1984."

2. The Company averred as a result of the latter notification they are discriminated. This no doubt is stated, but no material is placed to support the contention from the stand point of others. Therefore, the plea of discrimination simplicitor is held to have not been proved

3. The second issue raised is with reference to Section 25 of the Customs Act, which reads; "25 : Power to grant exemption from duty: (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon. (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, be special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable, (3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the contention that the duty of customs chargeable on such goods shall in no case exceed the statutory duty. Explanation : "former method" in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

4. The words ''Public Interest'' in the Section 25 relied on by the Company and it is urged public interest is not served by the second notification. The case in I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) is relied. it is urged in view of the number of persons afflicted by the killer disease of TB, the duty payable on the drug components of the company u/s 25 of the Act be exempted. The reason by it should be exempted again it is stated because of ''public interest'' found in Section 25. The prayer in the writ petition is : ''to declare the import of Pyrazine Mono- Carbolic Acid, the intermediate necessary for the manufacture of Pyrazinamide is in public interest and so is entitled to total exemption from customs duty and direct and respondents to notify.....".

5. The contention of the company is over-stated, for what is said in para 67 of the Supreme Court was more with reference to free press: "In view of the intimate connection of newsprint with the freedom of the press, the tests for

determining the vires of a statute taxing newsprint have, therefore, to be different from the tests usually adopted for testing the vires of other taxing statutes. In the case of ordinary taxing statutes, the laws may be questioned only if they are either openly confiscatory or a colourable device to confiscate. On the other hand, in the case of a tax on newsprint, it may be sufficient to show a distinct and noticeable burden someness, clearly and directly attributable to the tax." To a taxing statute like ''Customs Act, 1962'', referred as ordinary Act, what was said in the case is not relevant. Judged from that perspective, no case is made out for the interference of this court. The Writ Petition fails and is dismissed. No costs.

