courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 04/09/2026

(2005) 03 DEL CK 0119

In the Delhi High Court

Case No : Writ Petition (C) No''s. 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814 and 2783 of 1981

Jain Brothers APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 119 DLT 4 : (2005) 81 DRJ 406 : (2005) 100 ECC 217 : (2005) 121 ECR 26

Hon'ble Judges : Swatanter Kumar, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Ashish Dholakia, for the Appellant; Kailash Gambhir, for the Respondent

Judgement

Swatanter Kumar, J.—The above noticed 10 writ petitions have been on the ''Regular Board'' of this Court for quite sometime. In view of the fact that nobody was appearing on behalf of the parties, we had sent for the counsel appearing for Union of India, and after his appearance on 25.1.2005, we had passed the following order:-

% 25.01.2005 Present : None for the Petitioner. Mr. Amit Gupta for the Respondent. W.P.(C) No. 1812/1981 Counsel appearing for the Respondent states that he needs some time to reconstruct the file.

List this case for disposal on 7th February, 2005 in the category of Regular Matters.

In the meanwhile, the office of Mr. S.K. Dholakia, Advocate may be informed of the next date of hearing by the Registry by issuance of notice without process fee. The notice shall clearly states that no further adjournment will be allowed. Liberty is granted to counsel appearing for Union of India to inform Mr. Dholakia''s office by means of a letter.

2. When the matters were taken up for hearing on 7th February, 2005, even on

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jain-brothers-appellant-hash-union-...

that date the Counsel for the petitioner was present only in four writ petitions i.e. W.P.(C) No. 1809/1981, W.P.(C) No. 1811/1981, W.P.(C) No. 1812/1981 and W.P.(C) No. 1813/1981, while in other cases, nobody appeared on behalf of the petitioner. Rather than dismissing those writ petitions for default of non-prosecution, we considered it appropriate to deal with these writ petitions as well, because common question of law rises in all these writ petitions based on somewhat similar facts. While disposing of all these petitions by a common judgment, we would be referring to the facts of W.P.(C) No. 1812/1981 which was taken as a lead case with the consent of the Counsel appearing for the parties.

3. Petitioner is a partnership firm carrying on inter alias the business of supply of various types of bearings to various industries including automobile industry. For the purpose of this business, it is required to import various types of bearings and for this purpose it obtained license from the Chief Controller of Imports and Exports. In terms of the Import Policy, the petitioner was allowed to import the goods described in entry no. 453 of Appendix-V to the Import Policy which reads as under:-

Entry No. 453 - Bimetal, trimetal and Multimetal Bearings.''

4. These bearings upon their import are liable to customs duty under item no. 84.63 of the Customs Tariff Act, 1975. The payable standard duty is @ 60%. According to the petitioner, the goods imported by him are plain shaft bearings and they are distinguishable from ball bearings and roller bearings. There is no dispute to the fact that the goods imported by the petitioner are liable for customs duty but the dispute in the present case is restricted to the quantum of duty and the entry under which they are subject to such duty. u/s 3 of the Act, any article which is imported in India shall, in addition, be liable to a duty termed as ''additional duty'', equal to the excise duty, if products are manufactured in India and duty on a like article is livable at any percentage of its value. Under the provisions of the same Section of the Central Excises and Salt Act, 1944 (for short ''the Excise Act''), it is provided that there shall be duty levied and collected in such a manner as may be prescribed duties of excise on all excisable goods which are produced or manufactured in India and the first Schedule of the said Act. Section 3 of the Customs Tariff Act reads as under:-

Section 3 - Levy of additional duty equal to excise duty :-

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time-being livable on a like article if produced or manufactured in India and if such excise duty on a like article is livable at any percentage of its value, the additional duty to which the imported article shall be so livable shall be calculated at that percentage of the value of the imported article.

5. Item no.68 in Schedule I of the Excise Act provides for the duty which shall be liable to be imposed on goods which are not otherwise specified. It will be

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jain-brothers-appellant-hash-union-…

appropriate to refer to item no.34A in Schedule I of the Excise Act and 68 as well of the Schedule.

Item No. Description of goods Rate of duty 34A Parts of accessories and motor vehicles and tractors, including trailers, the following, namely:-

i) Brake linings;

ii) Clutch facings;

iii) Engine valves;

iv) Gaskets;

v) Nozzles and nozzle holders;

vi) Pistons;

vii) Piston rings;

viii) Gudgeon pins;

ix) Circlips;

x) Shock absorbers;

xi) Sparking plugs

xii) Thin-walled bearings;

xiii) Tie rod ends;

xiv) Electric rods;

xv) Filter elements, inserts and cartridges.

Explanation I - The expression Motor Vehicles has the meaning assigned to it in

Item No. 34.

Explanation II - The expression Tractors shall include agricultural tractors.

68

All other goods, Not Elsewhere Specified, but excluding -

8% ad valorem

a) alcohol, all sorts, including alcoholic liquors for human consumption;

b) opium, Indian hemp and other narcotic drugs and narcotics; and

c) dutiable goods as defined in section 2(c) of the Medicinal and Toilet preparations (Excise Duties) Act, 1955 (16 of 1955).

Explanation - For the purposes of this item goods which are referred to in any preceding item in this Schedule for the purpose of excluding such goods from the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jain-brothers-appellant-hash-union-...

description of goods in that item (whether such exclusion is by means of an Explanation to such item or by words of exclusion in the description itself or in any other manner) shall be deemed to be goods not specified in that item.

6. On the basis of the above facts it is the case of the petitioner that they are liable to pay duty in terms of item no.68 of the Schedule and not in terms of 34A as claimed by the Department. It is also contended that for the purposes of enforcing such entries, reliance has to be placed upon the specifications provided under the ISI Standards, and the Courts have given recognition to this principle that ISI Specifications are an important guide for authorities to construe appropriate classifications.

Reliance in this regard had been placed by the Court upon the judgment of the Supreme Court in the case of Union of India v. Delhi Cloth and General Mills Co. Ltd. AIR 1965 SC 791 as well as Porrits and Spencer (Asia) Ltd. v. Union of India and Ors. 1980 ELT 679 (Del).

7. Despite the fact that this petition has been pending before this Court for more than 23 years, no counter affidavit has been filed on behalf of the respondents. The only argument raised on behalf of the respondents is that the petitioners are importing bearings, which according to the respondents are covered under item no.34 A and as such they are liable to pay the customs duty as claimed by the Department. Other facts are not on dispute and in fact, have not been disputed before us, as according to the respondents the item imported by the petitioner answers the description of ''thin-walled bearings'' appearing in Item no. 34A and as such they are liable to pay the demand.

8. From the above referred judgments of the Court, it is clear that the ISI Specifications are an established guide for classification of goods under different items of the relevant Schedule of the Act. This is an exercise, which is expected to be carried out by the concerned authorities who are better equipped and are experts in the line. The petitioners have even placed on record, a letter from the Delhi Tractor Parts Traders Association as well as Scooter Syndicate, showing that the description of the goods imported and produced by the petitioner are in no way matchable as ''thin-walled bearings'' appearing in Entry No. 34A. It is also stated that these expressions are not used in the trade. The Supreme Court in the case of National Sales Corporation Vs. Collector of Customs, Madras, , while dealing with somewhat similar situation and the expression ''thin-walled bearings'' whether relatable to Item No. 34A or not, held as under:-

None of the authorities have recorded any finding that the bimetal bearing imported by the appellant satisfied the specification of IS:4774 of the Indian Standard. The Customs authorities and even the Tribunal instead of relying on any material as provided assumed that bimetal bearings are understood in the trade circle as thin walled bearings. In Kirloskar Oil Engines Ltd. v. Union of India CA No. 225 of 1991 decided today, it has been held that in absence of any material, IS specification cannot be ignored. The matter has been remitted to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jain-brothers-appellant-hash-union-…

High Court for decision afresh. Therefore, it is expedient to direct the Tribunal to decide these appeals of the appellant afresh.

9. There is no material on record, before us, to show that ISI Specifications in regard to the bearings which are being imported by the petitioner was taken into consideration. The petitioners are producing bimetal and trimetal, which itself may be relatable to the residue entry clause i.e. 68. In absence of any specific material and the fact that the ISI Specifications relating to ''thin-walled bearings'' and ''thrust half washers'' do not, at least prima facie admit the description of the goods imported by the petitioner, it would not be possible for the Court to accept the contention of the respondents. Bimetal and Trimetal bearing liners have been described in 2.2.10 and 2.2.23 of ISI Specification 4774 of 1968, while the dimensions of ''thin-walled bearings'' have been stated in 4.1 of the said standards. Once the matters have been dealt with and descriptions made by a specialised body (ISI), then it is not for this Court to form a view to the contrary, more so, when the contrary view is not substantiated by any plausible and cogent material.

10. For the reasons afore-stated and in view of the judgment of the Supreme Court in the case of Union of India v. Delhi Cloth and General Mills Co. Ltd. (supra) and National Sales Corporation (supra), we are of the considered view that the levy and demand of the customs duty under Item No. 34A of the Central Excise Tariff Act, in respect of the goods in question, is not sustainable. Consequently, we set aside that portion of Annexure-D and remand the matter to the competent authorities i.e. Assistant Collector of Central Excise for determination of the duty and its reliability to a particular item, in terms of the law afore-referred.

11. The writ petitions are allowed limited to the extent afore-noticed, while leaving the parties to bear their own costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jain-brothers-appellant-hash-union-…