(1991) 10 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 950 of 1988

Jalyan Udyog APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3

Citation : (1992) 58 ELT 33

Hon'ble Judges : R.G. Sindhakar, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Mr. Dilip Dalal, instructed by Dhruve Liladhar and Co, for the Appellant; Mr. J.P. Deodhar, for the Respondent

Judgement

Pendse, J.—Only question which was agitated by Mr. Dalal, learned counsel appearing for the petitioners is the liability of the petitioners to pay additional duty payable u/s 3(1) of the Customs Tariff Act, 1975 in respect of the ship imported for the purpose of breaking up. Few facts are required to be stated to appreciate the grievance of the learned counsel. Petitioners are a partnership firm and are carrying on business of purchasing old and unseaworth ships and dismantling and breaking the same. Petitioners purchased ship M.V. Dimities - K from Metal Scrap Trade Corporation Ltd. for the purpose of dismantling and breaking the same. On import of the ship the duty payable is under Customs Tariff Item 89.04 and standard rate of duty is 40%. Entry 89.04 reads as ''ships, boats, other vessels for breaking up.''

2. Mr. Dalal submits that the respondents are levying additional duty equal to excise duty u/s 3(1) of the Customs Tariff Act, 1975. Section 3(1) inter alia prescribes that any article which is imported into India, shall in addition, be liable to duty equal to excise duty for the time leviable on a like article, if produced and manufactured in India. Mr. Dalal submitted that additional duty leviable u/s 3(1) of the Customs Tariff Act is in the nature of countervailing duty. It was contended that the petitioners who have imported ship for the purpose of breaking up are

not liable to pay additional duty or countervailing duty because the concept of levying countervailing duty is to bring the imported article on par with locally manufactured in respect of payment of duty. Countervailing duty, says the learned counsel, is levied provided the article imported is either manufactured in India or is capable of (being) manufactured in India. Mr. Dalal submits that the ship is not manufactured in India or is capable of (being) manufactured in India only for the purpose of breaking up. Indeed expression ''manufactured'' clearly connotes that the article is to be brought into existence for the purpose of use and not for the purpose of dismantling or breaking up. Mr. Dalal therefore submits that additional duty being in the nature of countervailing duty, cannot be recovered from the petitioners.

Mr. Deodhar, learned counsel appearing on behalf of the Revenue, submitted that the assumption of Mr. Dalal that the additional duty is nothing but a countervailing duty is clearly untenable. Mr. Deodhar submitted that the Supreme Court examined the ambit of provisions of Section 3(1) of the Tariff Act in a decision Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, . and held that it cannot be said that Section 3(1) of the Tariff Act is an independent charging section or that additional duty which it speaks of is not a duty of customs but is a countervailing duty.

3. In view of the decision of the Supreme Court, contention of Mr. Dalal that additional duty payable u/s 3(1) of the Customs Tariff Act is equivalent to countervailing duty, cannot be acceded to. The additional duty payable u/s 3(1) is different from the countervailing duty and consequently the contention of Mr. Dalal cannot be accepted. Mr. Dalal made a faint attempt to distinguish the judgment of the Supreme Court by pointing out that the Supreme Court was concerned with a case where brass scrap was involved, and the question as to whether the ships are manufactured or capable of manufactured for the purpose of breaking up, did not arise. The submission is not correct because it is not the facts which are relevant to determine the ratio laid down by the supreme Court but the principle and the scope of Section 3(1) as found by the Supreme Court. In our judgment the petitioners are not entitled to any relief, and petition must fail.

4. Accordingly Rule is discharged with costs.

