(2009) 03 KL CK 0011

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7563 of 2009 (M)

K. Kochumon APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Citation : (2011) 273 ELT 187

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : P.N. Ramakrishnan Nair, for the Appellant; John Varghese, SC, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The petitioner is an importer of a commodity called ''reflective glass''. Exts. P1 & P2 are the bills of entries filed by them at the time of import. Ext. P3 is the notification issued by the 1st respondent levying antidumping duty on import of Float Glass originating in, or exported from, China and Indonesia. On the strength of Ext. P3, anti-dumping duty was imposed and the petitioner could clear the goods only on furnishing Exts. P4 & P5 Bank Guarantee for the duty that is payable.

2. In this writ petition, the petitioner disputes his liability to pay antidumping duty, as, according to him, reflective glass is excluded from the description of Float Glass, in respect of which anti-dumping duty has been imposed by Ext. P3. He is also making reference to Exts. P6 & P7 notifications. Ext. P6 is the notification dated 22-8-2003 containing the final findings in respect of the proposal for levying anti-dumping duty. A reading of paragraph 8 shows that the preliminary findings as regards the product under consideration, excluded reflective glass from the scope of the investigation and imposition of antidumping duty. This position is also seen reiterated in the conclusions and also in the schedule, to the notification itself. Ext. P7 is yet another notification issued by the Customs Department vide Notification No. 165/2003, dated 12-11-2003. This

also carries the description of the goods excluding reflective glass.

3. However, when it comes to Ext. P8, which is issued after a sunset review that was undertaken by the Department, the product under consideration has been described in the following manner :-

3. Product under Consideration.

The product under consideration in this sunset review is Float Glass of thickness 2 mm to 12 mm, (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes.

Since, the present investigation is a review investigation; product under consideration remains the same as has been defined in the original investigation, as there has been no significant development or change in the product during the period thereafter.

4. Similarly, when it comes to Ext. P10, the notification containing the final findings of the product under consideration and like article, paragraphs 6 & 8, reads as under :-

Views of the Domestic Industry

6. The product involved in the original investigation and this sunset review is Float Glass of thickness 2mm to 12mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes. Since, the present investigation is a review investigation; product under consideration remains the same as has been defined in the original investigation, as there has been no significant development or change in the product during the period thereafter. It is classified under Chapter heading 70.05 of the first schedule of Customs Tariff Act, 1975.

....

.... Examination by Authority

8. Authority examined the contentions of the domestic industry in detail. It is noted that the present investigation is a sunset review investigation and therefore the scope of the product under consideration should not be altered in review investigation. The Authority therefore holds that the scope of the present product under consideration is the same as was the scope of the product under consideration in the sunset review investigations notified vide Notification No. 14/19/2002-DGAD dated 22-8-2003 and consequent Customs Notification No. 165/2003-Customs., dated 12-11-2003.

It was thereafter that Ext. P3, the final notification of the anti-dumping duty on import of float glass, has been issued. Ext. P3 notification does not carry the description of the goods as contained in any of the previous notification, but only refers to Heading No. 70.05 of the 1st schedule of Customs Tariff Act, 1975.

5. Thus perusal Ext. P6 and P7 show that in the description of Float Glass, the item reflective glass has been excluded. But, however, such exclusion is not seen contained in Exts. P8 and P10. Therefore, when the goods in respect of anti-dumping duty is imposed in Ext. P3, the description of the goods as contained in Exts. P8 & P10 was what is relevant and this did not exclude reflective glass.

6. Therefore, prima facie, I am not satisfied that the reflective glass are excluded from the description of Float Glass in respect of which anti-dumping duty has been levied. In view of this, I am not persuaded to accept the contention of the learned counsel for the petitioner that the levy of anti-dumping duty is without jurisdiction.

7. True, the learned counsel for the petitioner made reference to Exts. P11 & P12. According to him these documents would show that reflective glass, were allowed to be imported in certain other ports in the country without levying anti-dumping duty. This Court can be guided only by the description of the commodity as available in the notification and even if there has been any omission on the part of the Department in levying duty at any place that will not justify interference levy of duty, if it is otherwise legal. Therefore, this court will not be justified in granting any relief in the writ petition and it is accordingly dismissed. However, it is clarified that the findings in the judgment will not stand in the way of the petitioner agitating his liability before the appellate Forum that is available under the statute, which, shall decide the matter untrammelled by any of the observations made above.

8. The writ petition fails and is, accordingly, dismissed.