(1990) 07 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 2173 of 1990

Krislon Texturisers Ltd. APPELLANT

Vs

S. Union of India RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 51 ELT 307

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. Rule returnable forthwith. Shri Vyas waives service. Heard counsel.

2. The issue involved in this petition filed under Article 226 of the Constitution of India lies in a very narrow compass. The petitioners had imported POY of 115 deniers which is texturised by petitioner No. 1 and fall under Tariff Item No. 18-II(i)(a) of the Central Excise Tariff. The petitioners cleared the consignment on payment of levy of Rs. 78.75 per kg. The petitioners claimed that the duty should have been levied at the rate of Rs. 61.25 per kg. The petitioners paid the duty under protest and thereafter filed Writ Petition No. 176 of 1983 in this Court for a declaration that the additional duty of customs or countervailing duly leviable on POY of 115 deniers was Rs. 61.25 per kg. and not Rs. 78.75 per kg. which is sought to be charged by the Collector of Customs. The petitioners also sought writ directing the respondents to clear the imported goods on payment of duty at the rate of Rs. 61.25 per kg. The petitioners then sought refund in the following terms in prayer (b) (ii) :-

"to refund to the petitioners the excess CVD illegally collected in respect of the goods i.e. POY of 115 deniers imported by them previously as per particulars of claim (Exhibit "C" hereto) amounting in all to Rs. 20,61,675/-."

3. The petition came up for hearing before Mr. Justice Bharucha on June 14, 1989 and the learned Judge held that duty payable was at the rate of Rs. 61.25

per kg. and not at Rs. 78.75 per kg. as charged by the Department. The learned Judge, accordingly, gave a declaration and also granted prayer B(ii) directing the Department to refund Rs. 20,61,675/- to the petitioner.

In accordance with the writ issued by the learned Judge, the aggregate sum of Rs. 25,39,779/- is refunded to the petitioners by two cheques dated April 18, 1990.

4. The present petition is filed on July 19, 1990 and the petitioners claim that the department is liable to pay sum of Rs. 36,30,892/- as interest on the duty which was erroneously collected and which was directed to be refunded by Mr. Justice Bharucha. It is not possible to accept the claim made by the petitioners. The petitioners did not demand refund of duty along with interest at the time of filing earlier petition in the year 1983. The petitioners did not seek the relief of refund of duty along with interest even at the time when the petition was argued before Mr. Justice Bharucha in June 1989. The petitioners recovered the amount of duty erroneously paid and thereafter has filed the present petition claiming interest. The claim of interest cannot be examined independently of the principal amount of duty which was repayable. The petitioners by their own conduct gave up the claim for interest by not demanding the same at the time of filing of the petition or at the time of grant of relief by the Single Judge. The principle underlying provisions of Order 2, Rule II is clearly applicable, though the provision is not directly attracted. It is now too late in the day to demand interest. In my judgment, the petitioners are not entitled to relief and the petition must fail.

5. Accordingly, rule is discharged but there will be no order as to costs.

