

(1987) 09 CAL CK 0009
In the Calcutta High Court
Case No : C.R. No. 9986 (W) of 1981

Laxmhi Narayan Ram Niwas

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 25
Customs Tariff Act, 1975 — Section 15

Citation : (1987) 32 ELT 12

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : R.N. Bajoria and S.K. Bagaria, for the Appellant; N.N. Roy Choudhury, Nilara Guha and Uma Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Ranjan Roy, J.—The petitioner is a Company carrying on business, inter alia, of importing and dealing in waste and scrap of various non-ferrous metals including brass waste and scrap.

2. By a notification bearing No. 156/77-Cus., dated July 16, 1977 the Central Government exempted copper waste and scrap when imported into India from so much of the duty of Customs leviable thereon as is in excess of 80 per cent ad valorem.

3. By another notification being No. 97/77-Cus., dated June 25, 1977 as amended by Notification No. 20/78-Cus., dated January 28, 1978 the Central Government exempted articles, other than copper waste and scrap and unwrought copper (refined or not), when imported into India, from so much of the duty of customs leviable thereon as is in excess of W per cent ad valorem.

4. Since in respect of some consignments of brass waste and scrap imported by the petitioner the Customs authorities have made purported assessments on the

Bills of Entry by wrongfully and illegally levying basic Customs duty at the rate of 80 per cent ad valorem the petitioner has come up before this Court for redress under Article 226 of the Constitution. This is because according to the petitioner, Customs duty on the said articles should have been levied at the rate of 10 per cent ad valorem in terms of the Exemption Notification No. 97/77.

5. According to the respondents, Customs duty on brass waste and scrap is leviable at the rate of 80 per cent ad valorem in terms of the Exemption Notification No. 156/77.

6. The question whether brass waste and scrap is covered by Notification No. 97/77 or 156/77 is no longer res integra and has now been finally concluded by the decision of the Supreme Court in *Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others*, . And the Supreme Court has held that since brass scrap is includible in the expression "copper waste and scrap", Notification No. 156/77 would be applicable and Customs duty would be leviable at the rate of 80 per cent ad valorem.

7. It was, however, contended on behalf of the petitioner that the Supreme Court while deciding the question did not consider the matter from one very important aspect though the point was actually raised before the Court.

8. Now, even assuming for the time being that while deciding the issue the Supreme Court did not take any particular point into consideration, it is not for this Court to question the correctness of the said decision.

9. Though Mr. Bajoria, the learned Counsel for the petitioner insisted at one stage that it was within the competence of this Court to take a different view of the matter taking into consideration the new point sought to be raised. Mr. Bajoria, appearing as the learned senior Counsel on behalf of the petitioner, conceded fairly and frankly that in view of the decision already taken by the Supreme Court, this Court could not take a different view of the matter even if this Court is of the view that the point now sought to be raised on behalf of the petitioner is substantial and has not been duly considered by the Supreme Court.

10. Mr. Bajoria, however, contended that since an application for revision has been filed before the Supreme Court for reconsideration of its decision in *Khandelwal's* case (supra) and the said application is sub-judice, this Court may simply record the contentions made on behalf of the petitioner in the judgment while disposing of the matter in the light of the decision of the Supreme Court.

11. The contentions now sought to be raised on behalf of the petitioner are as follows :

That the deeming fiction created by Section Notes 3 and 4 of Section XV of the Customs Tariff Act, 1975 for the purpose of classification under Heading No. 74.01/02 cannot and should not be applied for interpreting the scope and ambit of the relevant exemption Notification Nos. 97/77-Cus. and 156/77-Cus. That the Section Notes 3 and 4 are only rules for classification of a particular article under

a particular heading and cannot have any application for ascertaining the meaning of the words and expressions used in the exemption notifications issued u/s 25 of the Customs Act.

In the exemption notifications issued u/s 25 of the Customs Act the Central Government has been using the expressions, "copper", "brass", "bronze" etc. in their ordinary commercial parlance and not in their artificial or extended sense as given by the Section Notes 3 and H of Section XV of the Tariff Act.

As a matter of fact, in some of the notifications exemption has been granted only to brass articles, in some notifications only to copper articles and yet in some others exemption has been granted both to copper and brass articles. Reference in this connection was made to exemption Notification Nos. 117-DBK, dated 9-6-1978, No. 321-Cus., dated 2-8-1976, 280-Cus., dated 2-8-1976 and different other notifications.

It was strongly contended that in case the Central Government was using the expression "copper waste and scrap" in the exemption notifications in its extended sense as per Section Notes 3 and 4, it would not have taken the trouble to mention different articles individually which are includible in the expression "copper waste and scrap". In this connection it was also contended that exemption from payment of Customs duty either partially or as a whole, is a Government policy depending upon the local market condition and it is unlikely that similar market condition would prevail in respect of all the alloys of copper at the same time requiring the Government to grant exemption to all such imported alloys simultaneously.

In the ordinary commercial parlance, it was contended, brass scrap and copper scrap are altogether separate and distinct items as it will also appear from the ISI Specification No. 15:2066-1962 wherein brass scrap is classified under paragraph No. 6 and copper scrap under paragraph No. 8. Similarly, as per NARI Circular NF 77" issued by the National Association of Recycling Industries, New York, copper waste and scrap is a different and distinct item from brass waste and scrap. In the import policy also brass scrap and copper scrap have been separately mentioned.

It was, accordingly, submitted that in the instant case also the, expression "copper waste and scrap" in the relevant notifications should not be given its extended meaning and should not be held to include "brass scrap" as well. And that would make the Exemption Notification No. 97/77 applicable to "brass scrap" reducing thereby the duty payable to 40 per cent instead of 80 per cent.

12. However, as it appears, the point now sought to be raised here, was also raised before the Supreme Court in Khandelwal's case (supra) in the following way :

"Thirdly, the contemporaneous understanding of those who framed and issued the exemption notifications has always been that the expression "brass scrap" is

distinct from the expression "copper scrap" for determining the application of those Notifications. For example, each of the two Notifications No. 403, dated August 2, 1976 and No. 138, dated July 1, 1977 uses the expressions "copper scrap" and "brass scrap", which unequivocally indicates that the framers of the Notifications understood these two expressions to mean two different things. Reliance is placed by the Counsel on the decisions of this Court in *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*, and *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, in support of their submission that the contemporaneous exposition is a legitimate aid to interpretation. Therefore, so the contention goes, even assuming for the purpose of argument that copper scrap includes brass scrap, that conclusion must be resisted in view, of the history of the Exemption Notifications issued from time to time."

13. And the Supreme Court's answer was as follows :

"Reliance was also placed by the appellants on certain Exemption Notifications, referred to earlier, as affording intrinsic evidence to show the contemporaneous understanding of the framers of such Notifications. True, that such understanding is a legitimate aid to interpretation but, we cannot decide the question of classification of goods under the "Import" Tariff by implications, when there are Rules of Interpretation which are specially framed to aid and assist the classification of goods under appropriate headings. Those rules must have precedence over other aids of interpretation."

14. Whether in this way the matter was properly considered or not, is for the Supreme Court to decide in the review application which is said to be pending before it and awaiting disposal and this Court cannot have any say over the matter.

15. Be that as it may, the Supreme Court having held in *Khandelwal's* case (supra) that Customs duty leviable on imported brass scrap is covered by the exemption Notification No. 156/77-Cus., the petitioner is liable to pay Customs duty on the brass scrap imported by it at the rate of 80 per cent as provided therein.

16. The Rule, as such, is disposed of.

17. The petitioner should now pay to the respondents Customs duty on the imported brass scrap along with countervailing duty, as claimed in four equal monthly instalments.

18. The first of such instalment should be paid by the 15th October, 1987 and the subsequent three instalments by the 15th of each consecutive month thereafter.

19. In default of payment of any one of the instalments the entire balance shall be recoverable at once.

20. The petitioner should keep the Bank Guarantee renewed till the last instalment is paid.
21. In case of non-payment, the respondents would be entitled to encash the Bank guarantee either for the whole or for the unpaid amount of the claim.
22. If the Bank guarantee is not found sufficient the respondents may proceed personally against the petitioner in accordance with law.
23. No order is made for costs.