(1977) 03 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 2598 of 1973

Lucas T. APPELLANT

Vs

S. Ltd. V. Government of India RESPONDENT

Date of Decision : 21-03-1977

Acts Referred:

Customs Act, 1962 — Section 131, 2
Tariff (second Amendment) Act, 1933 — Section 2

Citation : (1978) 7 CTR 28

Hon'ble Judges : Koshal, J

Bench : Single Bench

Judgement

Koshal, J.—The petitioner (hereinafter referred to as the company), is a public limited company carrying on business of manufacturing electrical equipment for the automobile industry. In the course of that business, the company imported aluminium rods which were held by the customs authorities to be liable to duties of customs under item 70(1) contained in the First Schedule to the Indian Tariff Act, 1934 (hereinafter called the Tariff Act) and also to an additional duty (generally known as countervailing duty) equally to the excise duty leviable on aluminium rods under item 27 of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Excise Act). According to the company, no countervailing duty was payable by it and therefore it made a claim for the refund thereof, which was rejected by the Assistant Collector of Customs, Madras. The company went up in appeal to the Appellate Collector of Customs who allowed the refund on the ground that the imported items contained less than 97 per cent of aluminium and that they were only an alloy and could not therefore be classified as aluminium rods such as were chargeable to excise duty under item 27 above-mentioned. That order, however, was reversed by the Government of India acting under s. 131 of the Customs Act and that is why the company has invoked the Writ jurisdiction to this court with a prayer that the order of the Government of India be quashed by a Writ of Certiorari.

2. S. 2 and a part of sub-S. (1) of S. 2A of the Tariff Act, items 66(1) and 70(1)

of the First Schedule thereto and item 27 of the First Schedule to the Excise Act are reproduced below for facility of reference.

3. Tariff Act :

S. 2 : "The rates at which duties of customs shall be levied under the Customs Act, 1962 (LII of 1962) are specified in the First and Second Schedules.

4. S. 2A Levy of countervailing duty :

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

5. #

6. Items 66(1) and 70(1) of the First Schedule

7. THE FIRST SCHEDULE - Import Tariff

8. Item Name of article Nature Standard Preferential Duration No. of duty rate of rate of duty protective duty if the article rate of is the produce duty or manufacture of The A United British Kingdom colony 66(1) Aluminium in any Protec- 20 per - - Dec. 31st crude form, incl- tive cent adva- 1968 uding ingots, bars lorem blocks, slabs, billets, shots and Pellets 70(1) All non-ferrous Rev 60 per - - -alloys and manu cent factures of metals advalorem and alloys not otherwise specified;

9. ##

10. Provided that any such alloys or manufacture containing more than 97 per cent of aluminium shall be deemed to be aluminium in a crude form or aluminium manufactures, as the case may be, and dutiable as such.

11. #

12. Item 27 of the First Schedule to the Excise Act

13. THE FIRST SCHEDULE

14. Item No. Description of goods Rate of duty (1) (2) (3) 27. ALUMINIUM (a) (i) in any crude form including ingots, bars, Thirty per cent blocks slabs, shorts and pellets advalorem plus two thousand rupees per metric tonne (ii) wire bars, wire rods and castings, not Thirty per cent otherwise specified advalorem plus two thousand rupees per metric tonne, (b) Manufactures, the following namely plates Thirty per cent sheets, circles and strips in any form or valorem plus two size not otherwise specified thousand rupees per metric tonne (c) Foils (whether or not embossed cut to shape, Thirty per cent perforated, coated, printed or backed

with advalorem plus paper or other reinforcing material) of a two thousand thickness (excluding any backing) not rupees metric exceeding 0.15 millimeter tonne. (d) Pipes and tubes other than extruded pipes Thirty per cent and tubes advalorem plus two thousand rupees per metric tonne. (e) Extruded shapes and section including Thirty per cent extruded pipes and tubes advalorem plus two thousand rupees per metric tonne. (f) Containers made of aluminium "

15. ##

16. Explanation - "Containers" means containers ordinarily intended for packaging of goods for sale, including casks, drums, cans, boxes gas cylinders and pressure containers whether in assembled or unassembled condition and containers.

17. It is common ground between the parties that the aluminium rods imported by the company contained less then 97 per cent of aluminium and were therefore rightly classified as non-ferrous alloys liable to duties of customs under item 70(1) above-extracted. The contention raised on behalf of the company is that having thus classified the goods imported by it, the customs authorities could not change that classification for the purpose of S. 2A of the Tariff Act and charge countervailing duty thereon under item 27 of the First Schedule to the Excise Act, holding the same to be aluminium rods, which classification was not adopted by them for the purpose of S.2 of the Tariff Act. In my opinion, this contention has no force. Under S. 2 of the Tariff Act, duties of customs are levied according to the provisions of the First Schedule thereto. Items 66(1) contained in that schedule make a distinction between a non-ferrous alloy containing less than 97 percent of aluminium and aluminium in any other form which is described in item 66(1) as "any crude form" and that distinction has to be borne in mind when duties are levied under S. 2 of the Tariff Act. However, that distinction loses relevance when the countervailing duty is levied under S. 2A of the Tariff Act, according to which what is to be seen is whether the article imported is liable to duty under the Excise Act and for that purpose, reference will have to be made to the provisions of the latter Act alone. If an article comes under the description of an item chargeable under the the Excise Act, it will be liable to countervailing duty which shall be equal to the excise duty payable for it. S. 2A of the Tariff Act does not in any manner indicate that the classification of an article for the purpose of levying duty of customs under S. 2 shall prevail for that of levying duty under S. 2A thereof also; The schedules to the Tariff Act and those appended to the Excise Act do not have the same basis of classification and to long as Ss. 2 and 2A of the Tariff Act do not in terms lay down that a classification once made shall hold good for the purpose of both the sections, it must be held that the provisions of each of those two sections have to be read without reference to the other, especially when each is self-contained and there is not difficulty in the matter of its interpretation when read all by itself. Although the goods imported by the company were thus held to fall within the ambit of item 70(1) of the First Schedule to the Tariff Act and were therefore chargeable

to duties of customs thereunder for the purpose of S, 2-A of the Tariff Act, reference has to be made only to the first schedule to the Excise Act wherein is contained item 27 which declares aluminium rods (a description to which the goods imported by the company fully answer) as goods liable to excise duty and if that be so, the objection raised by the company to the countervailing duty must be held to untenable.

18. In the result, the petition fails and is dismissed but with no order as to costs.

