

(1977) 03 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 2598 of 1973

Lucas T.V.S. Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-03-1977

Acts Referred:

Customs Act, 1962 — Section 131

Tariff Act, 1934 — Section 2, 2A, 2A(1)

Citation : (1978) 2 ELT 711

Hon'ble Judges : Koshal, J

Bench : Single Bench

Final Decision : Dismissed

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 u/s 131 of the Customs Act and that is why the company has invoked the writ jurisdiction of this court with a prayer that the order of the Government of India be quashed by a writ of certiorari.

2. Section 2 and a part of Sub-section (1) of Section 2A of the Tariff Act, item 66 (1) and 70 (i) of the First Schedule thereto and item 27 of the First Schedule to the Excise Act are reproduced below for facility of reference.

Tariff Act. Section 2: "The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962) are specified in the First and Second Schedule."

Section 2-A. 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 that 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."

Item 66 (1) and 70 (1) of the First Schedule. The First Schedule-Import tariff.

3. It is common ground between the parties that the aluminium rods imported by the company contained less than 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 Section 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 Section 2 of the Tariff Act. In my opinion, this contention has no force. u/s 2 of the Tariff Act, duties of customs are levied according to the provision of the First Schedule thereto. Item 66 (1) and 70 (1) contained in that schedule make a distinction between a non-ferrous alloy containing less than 97 per cent 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 u/s 2 of the Tariff Act. However, that distinction loses relevance when the countervailing duty is levied u/s 2A of the Tariff Act, according to which what is to be seen 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 Excise Act, it will be liable to countervailing duty which shall be equal to the excise duty payable for it. Section 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 u/s 2 shall prevail for that of levying duty u/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 so long as Sections 2 and 2A of the Tariff Act do not in terms lay down that a classification once made shall hold good for the purposes 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 no 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 Section 2A of the Tariff Act, reference has to be made only to the First Schedule to the Excise Act wherein contained in 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 be untenable.

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