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(1993) 06 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 1591 of 1983

Lyphin Chemicals Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-06-1993

Acts Referred:
Customs Act, 1962 — Section 46

Citation : (1993) 48 ECR 21 : (1993) 66 ELT 572

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Shri Jerry Lewis and Mr. W.N. Deshpande, for the Appellant; Shri S.M. Shah, for the Respondent

Judgement

Pendse, J.—The petitioner are a private limited company and on September 28, 1981, imported 1980 kgs. of D2- amino-1 Butane air. The petitioner initially filed bill of entry for home consumption but could not make arrangement for payment of Customs duty which was at the rate of 25% ad valorem on duty differential bond. Subsequently, the petitioner applied for transfer of bill of entry to warehousing. The rate of duty was increased on November 27, 1981 and thereafter the petitioners sought substitution of bill of entry for home consumption in respect of warehousing. The request made by the petitioners by letter dated March 22, 1982 was turned down by the Assistant Collector of Customs, Air Cargo Complex, Sahar, Bombay reply dated March 27, 1982. The reply recites that the bond bill of entry was completed on November 26, 1981 and registered with Bond Department on December 3, 1981. The letter further recites that the interests of revenue are prejudicially affected and the substitution of the bill of entry for home consumption cannot be allowed. The order of the Assistant Collector is under challenge.

2. The learned counsel for the petitioners submitted that the Assistant Collector was in error in not permitting substitution of bill of entry for home consumption for a bill of entry for warehousing. It was contended that the goods were never

stored in the warehouse and consequently mere filing of bill of entry for warehousing is not enough to deny the relief to the petitioners. The submission is misconceived and cannot be accepted. The petitioners filed bill of entry for warehousing and the bond was completed on November 26, 1981 and was registered with Bond Department on December 3, 1981. Even assuming that the goods were not actually stored in the warehousing, that would not entitle the petitioners to claim that the bill of entry should be permitted to be substituted for home consumption as a matter of course. The anxiety of the petitioners to seek substitution is for the obvious reason that the rate of duty was increase with effect from November 27, 1981. The petitioners were desirous of substituting of bill of entry for home consumption to secure advantage of lesser rates of duty prevalent earlier. Section 15 of the Customs Act, inter alia, provides that the rate applicable to the imported goods in the case of goods entered for home consumption shall be rate on which the bill of entry in respect of such goods is presented. The petitioner, obviously to take advantage of lesser rate of duty were desirous of substituting the bill of entry filed for warehousing. In respect of the goods cleared from warehouse, the rate of duty is to be determined with reference to the date on which the goods are removed from the warehouse.

3. Shri Shah, learned counsel appearing for the Department, very rightly submitted that under sub-section (5) of Section 46 of the Act, it is open for the officer to permit substitution of the bill of entry for home consumption for a bill of entry for warehousing provided the officer is satisfied that the interests of revenue are not prejudicially affected. Shri Shah submits, and, in our judgment, with considerable merit that grant of substitution in the present case would directly affect the interests of the revenue. The petitioners would be entitled to clear the goods by payment of duty at a lesser rate. In our judgment the action of the Assistant Collector in declining to exercise power for substitution of the bill of entry does not suffer from any infirmity and the petitioners are not entitled to any relief.

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