(1990) 07 MAD CK 0126

In the Madras High Court

Case No : Writ Petition No. 10062 of 1982

Mahendra Industries APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 06-07-1990

Acts Referred:

Citation : (1991) 52 ELT 519

Hon'ble Judges : R.R. Mishra, J

Bench : Single Bench

Advocate : Shri K.C. Rajappa, for the Appellant; Shri P. Narasimhan, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

1. This Writ Petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof the order of the High Court, dated 14-12-82 and made herein and the records relating to the order in No. 251-B. 82 dated 17-7-82 on the file of the respondent comprised in the return of said respondent, to the Writ made by the High Court, and upon hearing the arguments of Mr. K. C. Rajappa Advocate for the petitioner, and of Mr. P. Narasimhan, Senior Central Government Standing Counsel on behalf of the Respondent, the Court made the following order :-

The petitioner herein, who is a manufacturer of Plastic bangles and is registered as a Small Scale Industrial Unit, holds an import licence for import of Cellulose Nitrate Films of 0.11 mm. thickness. The petitioner imported under the said licence Cellulose Nitrate Films, hereinafter referred to as C.N. Films, hereinafter referred to as C.N. Films and assessed to tax. It is alleged that the petitioner is entitled to as concessional rate of assessment of duty. But notwithstanding Notification No. 65-Customs, dated 30-4-1973 and Notification No. 86-Customs G.S.R. 667 (E) dated 27-11-1974, the petitioner has been put to excess import duty. Accordingly the petitioner is entitled to refund, but the same has been refused by the respondent.

2. Although many details are stated in the affidavit, which, for the purpose of this matter before this Court, are not necessary. A few facts, which require mention, however, I may state. It is not in dispute that the petitioner having a licence to import, placed orders with a foreign supplier Messrs. British Industrial Plastics Ltd., Worcestershire, and the goods being C.N. Films arrived at Madras Port on 30-8-1974. When the goods were cleared, they were classified under Item 82(3) Indian Customs Tariff and were subjected to duty at 100% plus 20% countervailing duty which, according to Bill Entry of Clearance for Home Consumption, was value at Rs. 9,604/- and the duty realised upon that was Rs. 11,224/- and an additional duty equal to excise duty amounting to Rs. 8,451-52p. was also levied. The total duty and additional duty levied was Rs. 19,976.32p. The petitioner thereafter applied before the Assistant Collector of Customs (Appraising Department) Madras for refund of excess duty realised from him. Giving relevant particulars in support of its claim, the petitioner claimed a sum of Rs. 13,637.72p to be refunded as excess duty collected. It has stated in its refund application that C.N. Films had been assessed to duty under Item 82(3) of Indian Customs Tariff at 100% plus 20% contrary to the terms of the Government of India Notifications dated 30-4-1973 and 27-11-1974. The petitioner has also asserted that the goods imported were wrongly assessed under Item 82(3) Indian Customs tariff. They ought to have been assessed under Item 87 thereof. The petitioner''s refund application, however, was rejected by the Assistant Collector of Customs (Refund Section) on 1-2-1975. The Assistant Collector of Customs took the view that the imported goods were cleared by the petitioner on 18-11-1974, that the Notification No. 86 dated 27-11-1974 had been issued subsequent to the clarification and that benefit of concessional rate mentioned in the said Notification therefore could not be given to the petitioner. Assistant Collector also concluded that the goods were identifiable as one assessable under Item 82(3) Indian Customs Tariff and accordingly they had been properly assessed to duty. The petitioner thereafter preferred an appeal on 6-6-1975 before the Appellate Collector of Customs, Madras. After inordinate delay, however, on 27-10-1979, the Appellate Collector of Customs dismissed the appeal and held that Item 82(3)(b) Indian Customs Tariff was the right provisions applied to assess the goods imported by the petitioner and that the petitioner was not entitled to any concessions as contemplated in the Government of India Notification afore mentioned. Petitioner preferred a revision to the respondent, Government of India, represented by the Joint Secretary, Ministry of Finance, New Delhi. Petitioner''s revision application, however, was dismissed. In the revision, however it was held that C.N. Films are different from C.N. Sheets and the Notification dated 27-11-1974 had been issued subsequent to the import of goods by the petitioner, therefore of refund claimed by the petitioner was not permissible. There has been an attempt before the respondent to demonstrate that plastic films would not answer the description of any commodity described in Item 82 (3)(b) of Indian Customs tariff. The Revisional authority, however, held that plastic films would answer the descriptions of ''Rectangular shapes''. Thus according to the respondent the goods were

correctly classified, under Item 82(3)(b) Indian Customs Tariff by the Appellate Collector of Customs, Madras.

3. Since the facts are not in controversy and nothing else is under challenge except whether the goods imported by the petitioner are taxable under Item 82(3) Indian Customs Tariff or not and whether if found taxable under Item 82(3), the petitioner is entitled to concessions envisaged under Notifications dated 30-4-73 and 27-11-1974 or not, I shall straightway proceed to deal with the relevant provisions of law and the said Notifications.

4. The goods in question were admittedly ''C.. Films''. There is no dispute before me that the goods in question were articles made of plastics. Duty under the Customs Tariff Act in respect of artificial resins, plastic materials of various types and articles thereof is leviable under S. 3 read with Chapter 39. Such goods which answer description in the schedule ar subjected to duty as stipulated for such items. Item 82(3) says;

"Items 82(3)(a) Artificial or Synthetic resins and plastic materials in any form whether solid, liquid or pasty, or as powder, granules or flaskes, or in the form of moulding powders.

Item 82(3)(b) stated

"Articles made of plastics the following, namely : tubes, rods, sheets, foils, sticks, other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible including lay flat tubings and polyvinylchloride sheets."

The standard rate of duty leviable upon the Items covered by Items 82(3)(a) as well as 32(3)(b) is 100% ad valorem. C.N. Films imported by the petitioner have been taken, for the purpose of such duty, to answer the descriptions in Item 82(3)(b) therein. One cannot miss to notice that such items that are specified therein though made of plastics, are tubes, rods, sheets, foils, sticks other rectangular or profile shapes whether laminated or not, and whether rigid or flexible including lay flat tubings and polyvinylchloride sheets. Can certain items which have been identified by all concerned as "Film made of plastic be one which answer the descriptions in Item 82(3) of Indian Customs Tariff ? In Collector of Customs, Bombay Vs. K. Mohan and Co. Exports, a question had arisen as to whether plastic films could be identified as anything answering the descriptions of tubes, rods sheets, foils, sticks other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible including lay flat tubing and polyvinylchloride sheets. The assessee in that case also had claimed refund. In that case the Tribunal held that the goods imported by the assessee were articles made of plastics; but they were films and not one of the categories of articles enumerated in the table as noticed by me above. The Supreme Court rejected the Revenue''s contentions that although described as films, articles answer the descriptions of sheets and foils stating inter alia

"We would also like to add that the expression ''other rectangular or profile shapes'' in the table is also not appropriate to bring in the items in question. For one thing, the articles have a distinct name in the market as ''films'' and therefore they are outside the table as already pointed out. For the same reasons as we have mentioned in the context of ''foils'' and ''sheets''; it will be possible to accept the contention that articles which have a clear commercial identity as ''films'' should be brought within the wide to and vague expression "other rectangular or profile shapes", because, if the film is cut into small pieces, each piece will be rectangular in shape. The items imported do not come in a rectangular shape; they are imported as rolls of polyester films. They are not articles of rectangular shape. Nor would it be possible to treat them as of other ''profile'' shapes. We are unable to attribute any precise meaning to the expression ''profile'' shape but it cannot be taken to be comprehensive enough to take in any shape whatever, as is contended for. If we give the expression "rectangular or other profile shapes" in the table such wide and unrestricted interpretation as is suggested, then practically any article of plastic can be brought within the meaning of one or other of the expressions used in the table and thus the entire exemption can be altogether deprived of any content."

This Supreme Court judgment dealt with each description such as tubes, rods, sheets, foils, sticks etc., and found that it was not possible to call a film for the purpose of customs duty anything but film. Similarity just in the facts of this case and the case decided by the Supreme Court, however, ends at that; but for the purpose of this case it gives sufficient guidelines to hold that goods which had been identified as ''C.N. films'' could not have been treated to answer such descriptions as are particularly used in Items 82(3)(b) of the Tariff.

5. I would have concluded my judgment by recording a finding as so above and thus holding that Item 82(3)(b) is not the proper provision which would have been applied to the goods imported by the petitioner leaving thus the competent authorities to find out the proper provision under which they would have levied customs duty upon the articles imported by the petitioner that is to say ''C.N. Films''. However, this case impelled me to deal with other contentions regarding the objection taken by the appellate and revisional authorities. But before I say anything about it, I may glance through the two Notifications. Notification No. 65 dated 30-4-1973 states

"Under the Government of India, Ministry of Finance (Department of Revenue and Insurance) Notification No. 65-Customs, dated 30th April, 1973 the Central Government hereby exempts cellulose nitrate sheet falling under Item 82(3) of the First Schedule to the Indian Tariff Act. 1934 (32 of 1934), when imported into India, from so much of that portion of the duty of customs leviable thereon which is specified in the first schedule as is in excess of 60 per cent as valorem.''

Under this Notification therefore anything that answers the description of ''cellulose nitrate sheet'' is required to be assessed at a rate not in excess of 60% ad valorem. This was followed by Notification No. 86 dated 27-11-1974. This Notification states.

"In exercise of the powers conferred by sub-section (1) of Section 25 of C.A. 62 the Central Government being satisfied that it is necessary in the public interest so to do hereby makes the following amendment in the Notification of the G.O.I. in the Ministry of Finance (Department of Revenue and Insurance) No. 65-Customs, dated 30-4-1973, namely :-

In the said Notification for the words "Cellulose Nitrate Sheets" the words "Cellulose Nitrate Sheets and Cellulose Nitrate films" shall be substituted (M.F.D.R. & I) Notification No. 86/74-Customs, dated 27-11-74).

There has been an explanatory Memorandum to the Ministry of Finance (Department of Revenue and Insurance) Notification 86-Customs, dated 27-11-1974.

Notification No. 65-Customs, dated 30-4-73 exempts Cellulose Nitrate Sheets from so much of the basic Customs Duty as is in excess of 60% ad valorem. This exemption was granted in order to provide relief to the industries manufacturing Combs, Spectacle in cottage sector. However, consequent on a change in the terminology used for licensing purpose, the material imported for manufacture of bangles has been termed as Cellulose Nitrate Films. Technically, therefore the benefit of concessional assessment under Notification No. 65-Customs dated 30-4-1973 could not be extended to the C.N. Films, the present Notification purports to specify clearly the materials namely Cellulose Nitrate Sheets and Cellulose Nitrate Films in respect of which the duty concession has been granted."

A close scrutiny of these two Notifications therefore will reveal the desire of the Central Government that concession should be given to the small scale/cottage sector industries which manufacture Combs, Spectacle, frames and bangles. When Notification No. 65 was issued with that in mind, it mentioned Cellulose Nitrate Sheets falling under Item 82(3) of the first Schedule to the Indian Tariff Act. Item 82(3) has already been stated supra. It has to be seen that petitioner''s articles which are described as ''C.N. Films'' have been subjected to duty under Item No. 82(3)(b) by identifying them as ''rectangular shape'' in Item 82(3)(b) of Indian Customs Tariff. If they do not answer the description of ''shapes'', how then they answer the descriptions of plastic in ''rectangular shape'' is not understandable. However, when clarification had already been issued by the Central Government under Notification No. 86 dated 27-11-1974 and it had been brought to the notice of the authorities concerned, they were atleast expected to peruse and consider whether this clarification had intended to extend such benefits as are contemplated under Notification No. 65 dated 30-4-73 to ''C.N. Films'' also or not. It is well settled that a revenue collection is permissible only when law prescribes for it. A Notification issued for the purpose of exemption cannot for the purpose be taken to be a statutory provision and if so it will only be extending the application of such provisions of law which contemplate exemptions etc., Notification No. 65 dated 30-4-1973 no doubt had some ambiguity. Perhaps ''C.N. Films'' can answer the description of Cellulose Nitrate Sheets''. Since, however ''C.N. Films'' were/are identified or used in trade as ''C.N. Films'' and not as ''Cellulose Nitrate Sheets'' it cannot be said that any of the revenue authorities erred in excluding ''C.N. Films'' from the exemption provision made in the Notification No. 65 dated 30-4-1973. Notification No. 86 dated 27-11-1974 intended to put ''Cellulose Nitrate Sheets'' and ''C.N. Films on par and it had done so. This notification shall give a clear and categorical meaning that both ''C.N. Films'' and ''Cellulose Nitrate Sheets'' shall be on par and that when imported into India, they would receive exemption as contemplated under the said Notifications. Read in this way, there is no occasion to think that Notification No. 86 intended to exempt ''C.N. Films'' prospectively, that is to say, on and from 27-11-1974 and not a day before. A liberal meaning should be given to a Government Order intending to extend certain benefits to Small Industries. It ought to have been allowed to have its full play. Any attempt to restrict its application served no purpose beyond putting a Small Scale manufacturer to tax thus discriminating between Small Scale Industries dealing with Cellulose Nitrate Sheets and Small Scale Industries dealing in C.N. Films.

6. Since I have taken the view that respondents have wrongly assessed C.N. Films imported by the petitioner under Item No. 82(3)(b) of the First Schedule of the Indian Tariff Act, I have no hesitation in holding that the impugned orders are illegal and without jurisdiction. Accordingly the order of the respondent herein dated 17-7-1982 vide order No. 251-B-82, declining to grant refund of excess duty amounting to Rs. 13,637-72p to the petitioner in respect of Cellulose Nitrate Films imported by the petitioner and cleared on 18-11-1974 is quashed. I, however, say nothing as to when and how a C.N. Film could be subjected to customs duty and at what rate. Learned Counsel for the petitioner has drawn my attention to Item 87 saying that since ''C.N. Films'' are not identifiable under any of the items, they have to be assessed under Item No. 87. Since I have taken notice of the judgment of the Supreme Court and the fact that a ''C.N. Film'' can hardly be identified as any of the items enumerated in Item No. 82(3)(b), possibly Item No. 87 only be the charging provision. The petitioner, however, shall get no benefit beyond any tax realised from him above 60% ad valorem whether he is assessed under Item 82(3)(b) or under Item 87. In the light of the Notifications above noticed, the revenue realisation from the petitioner will be at the maximum 60% ad valorem. Anything realised from the petitioner above 60% ad valorem therefore has to be refunded to him.

7. Learned Counsel for the petitioner has endeavoured to persuade me to grant some amount of interest upon the excess revenue realised from the petitioner particularly for the reason that his attempts at every level to convince concerned authorities failed because no one properly applied the Government Notifications aforementioned. Learned Counsel for the petitioner has also referred to the delay made at the level of the Central Government in disposing of the revision petition. Having taken into consideration these facts and the fact that those who are charged with a duty to realise revenue are expected to act with dispatch and promptitude, I order that on such amount that is found payable to the petitioner by way of refund, a simple interest at the rate of 6% per annum shall be paid.

There will be no order as to costs.

