(1979) 08 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 228 of 1973

Mahindra and Mahindra Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 24-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (1989) 25 ECR 150

Hon'ble Judges : Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality and validity of the order, dated May 15, 1972 passed by the Government of India in Revision. The claim of the petitioners of refund of duty paid between December 15, 1964 and July 1968 has been turned down on the ground that the claim for refund was not filed within the statutory time limit.

2. Only few facts are required to be stated. Mr. Dalal appearing for the respondents stated that the respondents have no objection for setting, aside the order passed in revision and the respondents shall reconsider the claim of the petitioners afresh. The petitioners are manufacturers of diesel agricultural tractors and the components of these tractors are imported, by the petitioners, including hydraulic lifts and 3 point linkages. Agricultural tractors are declared to be essential commodities and the selling prices were fixed by the Government of India. By a notification, dated August 6, 1960, certain exemptions were granted for component parts of machinery required for the purpose of initial set up of that machinery. Between December 1964 and July 1968 the petitioners imported about 58 consignments of hydraulic lifts and 3 point linkages and the Customs Department recovered the customs duty aggregating to Rs. 12,73,980.47 purporting to act under the provisions of the Customs Act, 1962. It is the claim of the petitioners that the duty was paid under protest and in respect of these 58

consignments different bills of entries were filed and in several bills of entries an endorsement was made on reverse that the duty was paid under protest. The first bill of entry was filed on December 15, 1964, while the second is on December 18, 1964 and photostat copies produced by the petitioners unmistakably indicate that the duty was paid under protest.

3. In May 1968 the Customs Department accepted the contention of the petitioners that no import duty is leviable on the components imported by them and the Collector of Customs issued a public notice on May 30, 1968 to the effect that the component parts of agricultural tractors are free of duty if imported for initial assembly of the machinery. Thereafter the petitioners claimed refund by a letter, dated December 4, 1968, but the Under Secretary to the Government of India advised the petitioners to have recourse to the remedies provided under Sections 128 and 131 of the Customs Act and in case their claim is rejected, to approach the Government of India. Accordingly, the petitioners applied for refund by filing an application before the Assistant Collector of Customs but the claims were turned down on the ground that the same was barred under the provisions of Section 27 of the Customs Act. The petitioners carried an appeal before the Appellate Collector of Customs but the appeal also ended in dismissal. The petitioners went in revision before the Government of India but were unsuccessful to get any relief. The order in revision is under challenge in this petition.

4. Mr. Rana, the learned Counsel appearing in support of the petition, contended that there are several bills of entries where the endorsement is made on the reverse that the duty is paid under protest and as such the rejection of the refund claim on the ground of limitation is totally erroneous. Mr. Dalai did not dispute that if the duty was paid under protest, then the question of limitation would not arise and the petitioners would be entitled to refund irrespective of the time when such an application is made. I enquired from Mr. Dalai as to whether the Department is in possession of bills of entries filed by the petitioners and whether any endorsement appears on the reverse of those bills to indicate that the duty was paid under protest. Mr. Dalai stated that out of bills of entries filed by the petitioners only 24 are at present in possession 6f the Department and out of that four bills bear the endorsement of payment under protest. Mr. Rana, on the other hand, pointed out that there are at least 15 bills on which an endorsement clearly appears and the petitioners are in possession of the photostat copies of the said bills. It was urged by the learned Counsel that on the first two bills of entries the endorsement clearly appears and several bills of entries covering the period from December 1964 to July 1968 would establish beyond doubt that the duty was paid in respect of the consignments under protest. There is merit in this submission. The course adopted by the petitioners over a period of four years unmistakably indicates that the duty was paid under protest. But I do not propose to pass a final order on that basis as Mr. Dalai stated that the Government would reconsider the claim of refund of the petitioners on merits and would give requisite relief, if satisfied that the duty was

paid under protest. Mr. Dalai also agreed that such a reconsideration would be completed within six months from today and that too after giving sufficient opportunity to the petitioners of producing all material in their possession to establish the fact that the duty was paid under protest and also giving a personal hearing to the petitioners.

5. Mr. Rana also submitted that in view of the long line of the decisions of the Supreme Court, the stand taken by the Department that the claim of refund is barred by limitation is entirely immoral and the Department should be directed to issue the order of refund in view of the dictum'' of the Supreme Court. As Mr. Dalai has agreed to reconsider the claim of the petitioners on merits, I need not express any opinion on the submission made by Mr. Rana at this stage. I wish to make it clear that in case the Department rejects the claim of refund of the petitioners on merits on the ground that it is not proved that the duty was paid under protest, then it is open for the petitioners to challenge that order and also claim that even though the claim was barred by limitation the Department must refund the duty wrongly recovered. Mr. Dalai has made it very clear that the Government in no case would ask for extension of time for disposal of the claim of refund afresh and the learned Counsel has made this statement on instructions of the Government of India.

6. Accordingly, the rule is made absolute and the order passed by the Government of India on May 15, 1972 is set aside and the proceedings are remitted back to the Government of India for disposing the claim of the petitioners on merits, afresh, within a period of six months from today, after giving sufficient opportunity to the petitioners to lead any fresh evidence and after giving opportunity of personal hearing. The respondents shall pay the costs of the petitioners.