(1991) 04 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1297 of 1987

Mansukhlal Chhaganlal Desai APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 18-04-1991

Acts Referred:

Citation : (1991) 36 ECR 312 : (1991) 56 ELT 27

Hon'ble Judges : S.P. Bharucha, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri J.F. Pochkhanawala, Mr. H.R. Shetty and Mr. A.G. Shah, for the Appellant; Shri J.P. Devadhar and Shri R. Asokan, for the Respondent

Judgement

Bharucha, J.—During the years 1979-1980 the petitioner imported zip fasteners, snap fasteners, glass beads and glass chattons and filed 70 Bills of Entry in respect thereof. He paid 100% Customs Duty, 20% Auxiliary Duty and 8% Additional Duty upon the imports.

2. The petitioner then preferred refund applications on the ground that the imported goods were covered by Chapter 17.18/10 of the Tariff Act and Exemption Notification No. 29 of 1979 dated 10th February 1979. The refund claims were, originally, dismissed on the ground that they were time-barred. The petitioner filed writ petitions in this Court. Counsel for the respondents stated that the dismissal orders would be withdrawn and the refund applications would be reconsidered both as regards the time-bar and on merits.

3. The petitioner was then heard again on his refund applications. They were rejected by the 3rd respondent on the ground that glass beads were used in artificial jewellery and were not exclusively embellishments for leatherwear; similarly, snap fasteners and zip fasteners were not embellishments as they were only used as fasteners. This writ petition impugns the order of the 3rd respondent.

4. The said Exemption Notification exempts the goods specified in the Table

thereof "used in the leather industry" from 60% Customs Duty and all additional duty. The relevant item in the Table reads thus : "Buckles and other embellishment for footwear."

5. The impugned order considered the view taken by a Collector of Customs (Appeals) that end-use was not a relevant factor in deciding whether or not the benefit of the said Exemption Notification should be extended to glass beads and chattons and snap and zip fasteners as embellishments for leatherwear. It also considered the view taken by the Government of India in revision therefrom that a benefit which was available to buckles under the said Exemption Notification could not be denied to snap and zip fasteners. The operative portion of the impugned order reads thus :

"... Glass beads are used in artificial jewellery and are not exclusive embellishment for leather wear. Therefore, the glass beads are not covered by Cus. Notification 29/79.

Similarly, snap fasteners and zip fasteners are not embellishments, as they are used as fasteners only and not for decoration."

6. Our attention was drawn by Mr. Pochkhanawala, learned Counsel for the petitioner, to the Supreme Court''s judgment in The State of Haryana v. Dalmia Dadri Cement Ltd. 1988 (14) ECR 292 where the Court considered Section 5(2)(a)(iv) of the Punjab General Sales Tax Act. It defined the expression "taxable turnover" to mean that part of a dealer''s gross turnover during any period which remained after deducting therefrom "sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (IX of 1910) of goods for use by it in the generation or distribution of such energy." The Supreme Court said that it was unable to accept the submission that, in order to get the exemption, it had to be shown that the goods in question, namely, the cement supplied by the assessee in that case, was actually used in the generation or distribution of electrical energy. It had to be noted that the important words used in the relevant provision were "goods for use by it in the generation or distribution of such energy." On a plain reading it was clear that the expression ''for use'' meant ''intended for use''. If the intention of the legislature had been to limit the exemption only to such goods as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually used" or "goods used".

7. The exemption under the said Exemption Notification is available to the goods specified in the Table thereto provided they are "used in the leather industry."

8. Glass beads, glass chattons, snap fasteners and zip fasteners are not exclusively used either as embellishments for footwear or in the leather industry. There was nothing before the 3rd respondent which showed that these goods imported by the petitioner had been used as embellishments for footwear in the

leather industry.

9. In our view, therefore, the view taken by the 3rd respondent is, upon the record before him, unassailable. The petition is dismissed with costs.

10. The amount of the refund as claimed was, by an interim order, directed to be deposited in Court and the same has been done. The respondents shall now be entitled to withdraw the same with accrued interest, if any. Upon Mr. Pochkhanawala''s application, such withdrawal shall not be made until after the expiry of the period of six weeks from today.

