(1984) 11 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2356 of 1982

McDowell and Company Ltd. — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 27-11-1984

Acts Referred:

Customs Tariff Act, 1975 — Section 3

Citation : (1989) 24 ECR 422

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

S.P. Bharucha, J.—The petitioners manufacture styrene from ethyl benzene. By reason of the notification dated 1st March, 1973 issued under Rule 8 of the Central Excise Rules, 1944, ethyl benzene is exempted from such excise duty thereon as is in excess of Rs. 472.50 per kilo litre. The notification states that this exemption is applicable if the Excise authorities are satisfied that the ethyl benzene is intended for the uses therein mentioned and, where such use is elsewhere than in the factory of production, the procedure laid down in Chapter X of the Central Excise Rules has been followed.

2. Between January 1981 and September 1982 the petitioners imported 9 consignments of ethyl benzene. Before so doing the petitioners wrote to the Customs authorities at Bombay. They referred to the notification and sought confirmation that only Rs. 472.50 per kilo litre would be chargeable as additional duty on the ethyl benzene to be imported by them. On 22nd December, 1980 the Enquiry Officer in the Office of the Assistant Collector of Customs, Public Relations, wrote to the petitioners that additional duty on ethyl benzene was chargeable at the concessional rate of duty of Rs. 472.50 per kilolitre having regard to the notification, subject to end-use confirmation.

3. In regard to the first and second consignments imported by the petitioners, bonds regarding the differential duty and end-use certificates of the appropriate authorities were furnished by the petitioners to the Customs authorities. The

bonds were thereafter cancelled by the Customs authorities. Then a show cause notice was issued to the petitioners regarding the first consignment. The only reason given in it for such issuance was an audit objection.

4. In regard to the third and fourth consignments, bonds and end-use certificates were furnished. The petitioners were then served with a show cause notice regarding the third consignment and the Customs authorities asked the concerned bank for payment on the bonds given for both the third and fourth consignments.

5. In regard to the fifth consignment, a bond and an end-use certificate were furnished. Without any show cause notice to the petitioners the Customs authorities made a demand upon the concerned bank for payment on the bond.

6. In regard to the sixth consignment, a bond and an end-use certificate were furnished. Without any show cause notice a demand was made for payment on the bond upon the concerned bank and upon the petitioners.

7. In regard to the seventh, eighth and ninth consignments, bonds and end-use certificates were furnished and this is where the matter rests.

8. It appears that for this action the audit authorities are responsible.

9. Mr. Bulchandani, learned Counsel for the respondents, submitted that the notification was under the Central Excise Rules and not u/s 3 of the Customs Tariff Act and would not be applicable to the additional duty payable upon the ethyl benzene imported by the petitioners. He also submitted that the notification laid down conditions for exemption from payment of excise duty; conditional exemption did not mean that excise duty was not leviable on ethyl benzene manufactured in India, and consequently, additional duty was attracted.

10. Both of Mr. Bulchandani''s submissions are squarely covered by the judgment of a Division Bench of this Court in Century Enka Ltd. v. Union of India 82 E.L.T. 64 : 1982 ECR 177D Bom. The Division Bench held that it was futile to urge that an exemption notification issued under the Central Excise Act would have no bearing to determine liability to pay countervailing duty under the Customs Tariff Act. The Division Bench also held, in effect, that if imported goods met the conditions for exemption from excise duty laid down in an exemption notification under the Central Excise Act, they would be entitled to that exemption in regard to additional duty.

11. Quite apart from this, the petitioners have acted on the Customs authorities'' representation. The petitioners having satisfied the requirements laid down by the Customs authorities therein, the Customs authorities cannot be permitted to go back on the representation, and that because of ah audit objection.

12. The petition is made absolute in terms of prayer b(i), (iii) and (c). The respondents shall pay to the petitioners the costs of the petition.

Rule accordingly.

The bank guarantees given by the petitioners pursuant to the interim order shall stand discharged.

