**(2005) 05 PAT CK 0051**

**In the Patna High Court**

**Case No :** CWJC No. 8820 of 2001

M/s. Kaur Sain Traders APPELLANT

Vs

The Union of India and Others RESPONDENT

**Date of Decision :** 05-05-2005

**Acts Referred:**

Customs Act, 1962 — Section 12, 2(14), 25, 25(1)
Customs Tariff Act, 1975 — Section 12, 2, 2(15), 2(23), 3

**Citation :** (2005) 2 PLJR 744

**Hon'ble Judges :** S.K. Katriar, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** Kali Das Chatterji, Amlesh Kumar Verma and L.N. Das, for the Appellant; Ajay Kumar Tripathy, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.K Katriar, J.—This writ petition has been preferred with the prayer to quash Order No. VIII (20)7-Cus/Refund/Misc/2000/ 3571, dated 16.12.2000 (Annexure-6), passed by the Assistant Commissioner of Land Customs Station, Jogbani (Respondent No. 2). and to direct the respondents to refund a sum of Rs.1,70,40,861/-, levied and collected from the petitioner as Special Additional Duty (hereinafter referred to as ''SAD'') u/s 3A of the Customs Tariff Act, 1975 (hereinafter referred to as the ''Tariff Act'') on polyester/texturised yarn manufactured in Nepal and imported into India by the petitioner during the period 1.3.2000 to 28.9.2000. According to the writ petition, the petitioner is a partnership firm having its place of business in Ludhiana (Punjab). It had imported polyester/texturised yarn from Nepal in bulk quantity during the period 1.3.2000 to 28.9.2000. After the goods had crossed the Indo-Nepal border, respondent No. 2 levied SAD u/s 3A of the Tariff Act and assessed it at Rs. 1,70,40,861/-. The petitioner paid the same under protest. Thereafter it raised an issue before respondent No. 2 for refund of the amount, taking the plea that since its imports were exempt from payment of Customs Duty under the provisions of the Customs Act, 1962 (hereinafter referred to as the ''Act''), it was also not required to pay SAD. The contention has been rejected by the impugned order, wherein it is held that it was lawfully realised. Hence this writ petition.

2. In exercise of the powers conferred by sub-section (1) of Section 25 of the Act, the Central Government exempted all the goods except those enumerated in the notification from the basic Customs Duty in terms of Section 12 of the Act, provided the goods were wholly manufactured in Nepal, vide Gazette Notification No. 37 of 1996-Cus., dated 23.7.1996, as amended by Notifications No. 99/96-Cus., dated 27.12.1996 and No. 5/97-Cus., dated 20.1.1999 (Annexure-1). The relevant extract from the notification is as follows:

...

B. All manufactured goods other than the following:

(i) Alcoholic Liquors or beverages and their concentrates, other than beer and Industrial spirits.

(ii) Perfumes and cosmetics with non-Nepalese or non-Indian brand names.

(iii) Cigarettes and Tobacco.

2.1) in exercise of the powers conferred by sub-section (4) of Section 3A of the Tariff Act, read with sub-section (1) of Section 25 of the Act, the Central Government exempted the items covered by Annexure-1 from imposition of SAD leviable u/s 3A of the Tariff Act, vide Gazette Notification No. 124/2000-CUS-TOMS, dated 29.9.2000 (Annexure-4). In exercise of the powers conferred by Section 25 of the Act, the Central Government in substance has withdrawn the aforesaid notification dated 29.9.2000 (Annexure-4) vide Notification No. 135/2001-Cus., dated 31.12.2001, with the result that SAD in terms of Section 3A of the Tariff Act is leviable with effect from 31.12.2001. The net result, therefore, is that exemption from imposition of the basic customs duty on all goods wholly manufactured in Nepal and imported into India (except the items specified in Annexure-1) continues to be in operation, whereas exemption from payment of SAD in terms of Section-3A of the Tariff Act was in force only for the period 29.9.2000 to 31.12.2001.

3. While assailing the validity of the impugned action, Learned Counsel for the petitioner submits that since the goods manufactured in Nepal on being imported into this country do not attract basic customs duty u/s 12 of the Act in view of the exemption granted u/s 25 of the Act, any question of payment of SAD on those imports in terms of section 3A of the Tariff Act also does not arise. The Additional Duties levied under the Tariff Act are duties levied in addition to the basic customs duty under the Act. In other words, the Act and the Tariff Act form one composite legislation complementary to each other and the one cannot be effectuated without having recourse to the other. He relied on the judgment of the Supreme Court reported in Ashok Service center and Others Vs. State of Orissa, . Relying on the judgment of Supreme Court.reported in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, , he submitted that the

 

principle "Nil duty is also duty" applies to the Central Excises and Salt Act and not in relation to the Act. The goods imported from Nepal are not dutiable goods within the meaning of Section 2(14) of the Act. He also relied on the observations in the judgment reported in (1921) 1 KB 64 (Cape Brandy Syndicate vs. IRC, and quoted with approval by our Supreme Court in its judgment reported in Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd., .

4. Learned Additional Standing Counsel opposed this writ petition and submitted that the two statutes are distinct and independent of each other. He relied on the judgment of the Supreme Court reported in Hyderabad Industries Ltd. and Another Vs. Union of India and Others, . He further submitted that the incidence of duty u/s 12 of the Act is fundamentally different and independent of the diverse incidence of duties under the Tariff Act. In his submission, separate duties are leviable under Sections 3, 3A, 8B, 9 and 9A of the Tariff Act, all of which can singly or in addition to the basic customs duty be levied independently or separately on any import of goods. He relies on the following reported judgments:

(i) Apar Private Ltd. and others Vs. Union of India and others, ;

(ii) 1983 E.L.T. 1751 (Ker.) (Kamaraj Spinning Mills Ltd. vs. Union of India);

(iii) Eastern Spinning Mills and Indus. Ltd. Vs. Union of India (UOI), .

5. Learned Counsel for the petitioner in reply admitted that there are different/ various charging sections under the Tariff Act, any one of those can be levied without the other but none of which can be levied without the basic customs duty under the Act. He submitted that neither the judgment of the Supreme Court in Hyderabad Industries Ltd. (supra), nor the three judgments reported in the Excise Law Times (supra), dealt with the expression "in addition" occurring in section 3A of the Tariff Act. He further submitted that the judgment of the Supreme Court in Hyderabad Industries Ltd. (supra) dealt with section 3, and not with Section 3A, of the Tariff Act.

6. Thus the area of dispute which falls for adjudication of this Court is whether or not SAD in terms of Section 3A of the Tariff Act can be levied only in conjunction with the main customs duty in terms of Section 12 of the Act, or it can be imposed independent of the latter.

7. Section 2(14) of the Act provides that ''dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid. Section 2 (15) lays down that "duty" means a duty of customs leviable under the Act. Section 2(23) lays down that "Import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India. Section 12 is the Charging section and reads as follows:

"12, Dutiable goods.--(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India."

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Section 25 of the Act confers on the Central Government the power to exempt from the whole or any part of the duty of customs''.

7.1) Section 2 of the Tariff Act reads as follows:

"Section 2: Duties specified in the Schedules to be levied.--The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules."

Scheduie-I incorporates the duties on the imports, and Schedule-II on the exports.

Section 3 of the Tariff Act provides levy of additional duty equal to excise duty. The relevant portion is set out hereinbelow for the facility of quick reference:

"Section 3. Levy of additional duty equal to excise duty.--(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the Additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States, or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs."

Section 3A provides for imposition of special additional duty, the relevant portion of which is set out hereinbelow for the facility of quick reference:

"3A. Special additional duty.--(1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India:

Provided that until such rate is specified by the Central Government, the special additional duty shall be -levied and collected at the rate of eight per cent of the value of the article imported into India.

Section 8B of the Tariff Act provides for imposition of Safeguard duty when such increased quantities of import of goods is causing or threatening to cause serious injury to domestic industry.

Section 9 of the Tariff Act provides for imposition of countervailing duty on goods which has been bestowed with any subsidy in the country of origin.

Section 9A empowers the Central Government to impose anti-dumping duty on dumped articles exported from any country or territory to India at less than its normal value.

8. On a thoughtful consideration of the schemes, the aims and objects and the relevant features of the two Acts, highlighted hereinabove, it appears to us that Section 12 of the Act, being the charging section, would be rendered functionless unless it is read with the First and Second Schedules of the Tariff Act, The incidence of duty on the imports in terms of Section 12 of the Act can take place without the levy of any one of the duties permissible under the Tariff Act. Sections 3, 3A, 8B, 9 and 9A of the Tariff Act are all charging sections independent of each other, equally independent of Section 12 of the Act, and each one of them (including Section 12) can be levied without the other. Section 2 of the Tariff Act, providing for the First and the Second schedules, being the lists of tariffs for imports and exports, are common to both the Acts. Till such time the Central Government specifies the rate of SAD, it shall be levied and collected at the rate of 8 per cent at the value of the imported article. The special duties in terms of Sections 8B, 9 and 9A of the Tariff Act can be levied only after the Central Government decides to levy the same by publication of the requisite notification in the official Gazette. It is another matter that the Central Government may, in exercise of its powers u/s 25 of the Act, exempt certain goods from the imposition of the duties of customs in terms of Section 12 of the Act or Sections 3 or 3A of the Tariff Act. It is equally another matter that, after having issued the requisite notification in the Official Gazette in terms of Sections 8B, 9 and 9A of the Tariff Act, imposing the levy, the same can be withdrawn.

9. We now proceed to consider the reported judgments cited by Learned Counsel for the parties. Learned Counsel for the petitioner informed us of the rules of construction with respect to taxing statutes. He relies on the judgment of (Cape Brandy Syndicate vs. IRC) (supra), which was quoted with approval by our own Supreme Court in the case of Commissioner of Central Excise, Pondicherry (supra), and is set out hereinbelow for the facility of quick reference:

"...........In a taxing Act one has to look merely at what is dearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The reliance placed by the Learned Counsel for the petitioner on the proposition of law is apposite and we propose to construe the provisions of the two enactments in question accordingly.

10. In order to support his submission that the two Acts are independent of each other, Learned Counsel for the petitioner relied on the judgment of the Supreme Court in Ashok Service Centre (supra). The Orissa Sales Tax Act, 1947, described in the judgment as the Principal Act, was enacted and brought into force in the year 1947, and continues to remain in force. It is a law intended for levying taxes on the sale and purchase of goods other than newspapers, subject to provisions of Entry 92-A, of List 1 of the Seventh Schedule to the Constitution. Section 4(1) of the Principal Act is the charging section and imposes liability to pay tax on every dealer whose gross turn over during the fiscal period exceeds rupees fifty thousand. Levy of tax at a single prescribed point and prohibition against levy of tax at more than one point is an important characteristic of the scheme of the Principal Act. However, with a view to augmenting the resources of the State Government, the Orissa Legislature enacted the Orissa Additional sales Tax Act, 1975 (Orissa Act 24 of 1975), levying additional sales tax on certain classes of dealers. The Supreme Court came to the conclusion that 1975 Act was virtually in the nature of amendment of the Principal Act and had no independent existence of its own. in that background, it was held that the Act was virtually in the nature of amendment of the Principal Act. Although the provisions of 1975 Act could have been incorporated in the Principal Act itself, the State Legislature instead passed a separate Act. Therefore, the two Acts had to be read together in order to make the provisions of the 1975 Act effective. The Supreme Court, therefore, disagreed with the view of the High Court that the two Acts were independent of each other. The Supreme Court found it necessary to read and construe the Principal Act and the 1975 Act together as if the two were one and while doing so, to give effect to the provisions of the 1975 Act, which has manifested an intention to modify the Principal Act. It was further held that the State Legislature intended not to depart substantially from the principal Act except with regard to matters in respect of which express provision had been made in the 1975 Act. Though the Act had the usual features of a statute, it could not be considered as an independent statute but must be read together with the Principal Act to be effective. It is thus manifest that the judgment in Ashok Service Centre (supra) stood on a fundamentally different footing where the later Act was in pith and substance construed not to be independent of the Principal Act but practically as an amending Act. The judgment is, therefore, inapplicable to the facts and circumstances of the present case.

11. Learned Counsel for the petitioner has also relied on the judgment of the Supreme Court in Associated Cement Companies Ltd. (supra). That was a case under the Customs Ad and the question for consideration was whether or not drawings, designs, etc. relating to machinery or industrial technology were goods which were leviable to duties of customs on the transaction value at the time of their import. The Supreme Court held that the principle nil rate of duty is also duty is applicable to the Central Excises and Salt Act and not the Customs Act.

 

Paragraphs 78, 79 and 82 of the judgment are set out hereinbelow for the facility of quick reference:

"78. While dealing with the provisions of the Excise Act, this Court in Collector of Central Excise, Hyderabad etc. etc. Vs. M/s. Vazir Sultan Tobacco Company Limited, Hyderabad Etc. Etc., referring to an earlier decision in the case of Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, Bombay, Division III, had observed that if by virtue of an exemption notification the rate of duty was reduced to nil, the goods specified in the Tariff Act would still be regarded as excisable goods on which nil rate rate of duty was payable."

"79. It appears to us that the aforesaid decisions, which were sought to be invoked by the respondent in an effort to submit that the drawings and designs, which came as a part of passenger baggage, were dutiable goods, would not be applicable."

"82. Section 12 of the Customs Act provides that the duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act. When the Customs Tariff Act itself provides that the import of drawings and designs under Heading 49.06 is "free", it must follow that these drawings and designs, though goods, were not chargeable to duty. In view of the difference in the language of the Excise and Customs Acts, the decisions in the cases of Vazir Sultan and Wallace Flour Mills may not be very apposite and if no customs duty is chargeable either by reason of tariff not providing for it or because of the exemption notification, those goods will not be regarded as dutiable goods "on which duty has not been paid." It is sufficient in the present case to observe that the drawings and designs which were imported by the appellant were correctly classifiable under Heading 49.06 and the tariff itself providing that the import of the same is free, the said drawings and designs were not dutiable articles and, therefore, no customs duty was leviable thereon even as a part of the passenger baggage. On this short ground alone the appeal of Videocon has to be allowed.

12. In view of the discussion hereinabove, it is manifest that, in so far as the incidence of duties are concerned, the two Acts are independent of each other, one duty can be levied without the other. The proposition submitted by the Learned Counsel for the petitioner that nil duty is also duty obtains under the Excise Act and not under the Customs Act. Associated Cement Companies Ltd. (supra) does not support the petitioner''s case.

13. Learned Additional Standing Counsel has rightly placed reliance on the judgment of the Supreme Court in Hyderabad Industries Ltd. (supra) which lays down to the effect that the various imposts under the Tariff Act are additional to the basic customs duty and can be levied in the absence of the latter Each one of these is independent of the other, and any one of those can be levied without the rest. Paragraphs 10 to 15 of the judgment are relevant for this case, paragraph 14 which is of special relevance and is quoted below:

"14. There are different types of customs duties levied under different Acts or rules. Some of them are:

(a) a duty of customs chargeable u/s 12 of the Customs Act, 1962;

(b) the duty in question, namely, u/s 3(1) of the Customs Tariff Act;

(c) additional duty levied on raw materials, components and ingredients u/s 3(3) of the Customs Tariff Act, and

(d) duty chargeable u/s 9-A of the Customs Tariff Act, 1975.

The Customs Act, 1962 and the Customs Tariff Act. 1975 are two separate independent statutes. Merely because the incidence of tax u/s of the Customs Tariff Act, 1975 arises on the import of the articles into India it does not necessarily, mean that the Customs Tariff Act cannot provide for the charging of a duty which is independent of the customs duty leviable under the Customs Act."

(Emphasis added)

14. The learned Additional Standing Counsel has rightly relied on the three judgments reported in Excise Law Times. The judgment in the case of Apar Private Ltd. (supra), rendered by a Full Bench of Bombay High Court, entirely supports the cases of the respondents wherein it has been held that duty under the Tariff Act can be levied even in a situation where there has been exemption from levy of the basic customs duty u/s 12 of the Act. The Bombay High Court has held as follows:

"61........... A notification u/s 25(1) of the Customs Act read with Section 3(6) of the Customs Tariff Act may exempt such goods wholly or partially from the levy of additional duty as well. When exemption is granted by the Central Government u/s 25(1) of the Customs Act, that can operate only in respect of such duty as is specifically mentioned in the particular notification. A notification u/s 25(1) exempting goods from levy of basic customs duty cannot by itself exempt such goods from the levy of countervailing duty or additional duty leviable under the Tariff Act or the Customs Tariff Act, 1975. Merely because goods are exempted from levy of basic customs duty leviable u/s 12 of the Customs Act, it does not follow that they are also exempt from levy of countervailing duty or additional duty; nor does exemption from levy of countervailing duty or additional duty, wholly or partially, result in exemption of the goods from the levy of basic customs duty, wholly or partially. As exemption granted from the levy of basic customs duty u/s 25(1) read with Section 12 of the Customs Act does not by itself operate as exemption from the levy of countervailing duty or additional duty under the Tariff Act or the Customs Tariff Act, goods imported, even though exempted from basic customs duty, may still be subject to the levy of additional duty under the respective enactments and they would be so subject unless and until they are specifically exempted by the Competent Authority in exercise of the powers vested under those respective enactments from such additional duty. In fact, a reference to the notifications issued from time to time show that the Central Government in exercise of this power of exemption u/s 25(1) of the

 

Customs Act in some cases exempted the goods only from levy of basic customs duty, wholly or partially, and in some cases only from the levy of additional duty, wholly or partially. Some notifications may have even exempted the goods wholly or partially from the levy of both basic customs duty and additional Duty......."

It is thus manifest that the additional duties under the Tariff Act can be levied even if the Central Government has issued a notification in the official gazette exemption levy of the base customs duty in terms of Section 12 of the Act. The judgment principally dealt with Section 3 of the Tariff Act. There was no occasion for the Bombay High Court to consider the provisions of Section 3A of the Tariff Act which was inserted by the Finance (No. 2) Act, 1998 with effect from 1.4.1998, whereas the judgment was handed down on 17.10.1985. However, the judgment in principle wholly supports the respondents case.

15. The judgments of the Kerala High Court in Kamaraj Spinning Mills Ltd. (supra), the Calcutta High Court in Eastern Spinning Mills Ltd. (supra), both rendered by learned Single Judges, are to the same effect as that of the Bombay High Court, and fully support the respondents case. In the result, this writ petition is dismissed. The impugned order dated 16.12.2000 (Annexure-6) is hereby upheld. In the facts and circumstances of the case, there shall be no order as to costs.

Aftab Alam, J.

I agree.

 