courtkutchehry.com
Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 06/09/2026

(1990) 10 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition No. 3662 of 1983

Mysore Petrochemicals Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-10-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 8 (2)
Customs Act, 1962 — Section 12
Customs Tariff Act, 1975 — Section 3 (1)

Citation : (1991) 32 ECC 99 : (1992) 61 ELT 252 : (1991) 1 KarLJ 132

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : Shri K. P. Kumar, for King and Partridge, for the Appellant; Shri Shailendra Kumar, Central Govt. Standing Counsel, for the Respondent

Judgement

K.B. Navadgi, J.—The short question that falls for consideration in this writ petition filed under Article 226 of the Constitution of India is : Whether the petitioners are entitled to claim exemption from payment of additional duty u/s 3(1) of the Customs Tariff Act, 1975 (the Act of 1975 for short).

2. Few facts to be noticed and adverted to decide the question are these. The Mysore Petrochemicals Ltd., petitioner-1, hereinafter referred to as the petitioner-Company is a Joint Stock Company incorporated under the Companies Act, having its registered office at 26/11, Sankey Road, Bangalore. Petitioner-2 is the Secretary and Shareholder of petitioner-Company.

3. The petitioner-Company manufactures among other thing phthalic anhydride (finished product for short). It requires raw material called "orthorxylene" to manufacture finished product. The raw material is manufactured in India by Indian Petrochemicals Corporation Limited, Baroda (I.P.C.L. for short). The manufacturers of the finished product including the petitioner-Company are five in number in the country. The production of raw material falls far short of the requirement of the manufacturers. The deficit is imported from outside the

country under import licences (Open General Licence) by the manufacturers.

4. The petitioner-Company has been importing the raw material required by it in addition to its quota allotted by the I.P.C.L. from the United States of America, Europe and Japan.

5. On the imported goods, three types of duties are levied, namely, customs duty u/s 12 of the Customs Act, 1962, auxiliary duty and additional duty under the provisions of the Act of 1975. The petitioner-Company has been importing the required raw material from 27th March, 1978. The authorities of the Customs have levied and collected additional duty on the raw material so imported by the petitioner-Company. At the time of institution of the writ petition, the petitioner-Company had agreed to import approximately 991.280 metric tonnes of the raw material from a Company in West Germany It had duly opened the Letters of Credit for the import thereof and the consignment of the said quantity of 991.280 metric tonnes was expected to arrive at Bombay Port by a ship. The authorities of the Customs had endorsed the bills of entry stating that the petitioner-Company was not entitled to claim any exemption under the notification issued by the Government of India in exercise of its powers conferred by sub-rule (2) of Rule 8 of the Central Excise Rules, 1944 (the Rule framed under the Central Excise Act). It is this action of the authorities of the Customs in having levied and collected the additional duty and in having directed the collection of additional duty under the provisions of the Act of 1975 that is impugned in this writ petition.

6. We have heard the learned Counsel for the petitioners and learned Central Government Advocate for the respondents.

7. Section 3(1) of the Act of 1975, the material provision as extracted below reads as follows :

"3. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter 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.

Explanation. - In this section, the expression ''the excise duty for the time being leviable on a like article if article if produced or manufactured in India'' means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty"

A reading of this section along with the Explanation would make it clear that any

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mysore-petrochemicals-ltd-appellant…

article which has been imported into India is in addition liable to duty called 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 the 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. If a like article is not produced or manufactured in India, the additional duty leviable would be the excise duty leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest rate.

8. The contention of the petitioners is that when the producer of the raw material in India is exempted from the payment of excise duty under the provisions of the Central Excises and Salt Act by virtue of a notification, no additional duty can be levied on the raw material imported by them under sub-section (1) of Section 3 of the Act of 1975. Reliance was also placed on the licence granted to the petitioner-Company in form No. L. 6 produced as Annexure-B to the writ petition. The learned Counsel for the petitioner in support of the contention referred us to Annexure-B in which it is made out that the price paid by the petitioner-Company on the raw material "orthoxylene" was not included in the price fixed for levy of excise duty, that is the petitioner-Company is authorised to obtain ''Orthoxylene'' without payment of excise duty thereon.

9. In support of the contention, the learned Counsel for the petitioners invited our attention to the decisions of the High Court of Judicature at Madras as well as the High Court of Judicature at Bombay. In Saigal Industries Vs. Central Board of Excise and Customs and Another, the provision of law under consideration was Section 2A(1) of the Indian Tariff Act, 1934 the predecessor of Section 3(1) of the Act of 1975 and a notification similar to the one under our consideration. It has been held in the said decision that in order to attract the liability for payment of countervailing duty u/s 2A(1) of the Indian Tariff Act, 1934 an excise duty on a like article, if produced or manufactured in India shall be leviable and if no such duty is leviable, on a like article, then the countervailing duty cannot be levied. In the said case it had been found that the excise duty was not leviable on a like article produced or manufactured in India. It was, therefore, ruled that no countervailing duty could be leviable on the article imported into India. The goods involved in the case were acrylic sheets imported by the petitioners therein. The decision lays down that the goods imported by the petitioners were exempted from the payment of countervailing duty since no excise duty was payable on like articles, produced or manufactured in India and as goods imported by the petitioners were exempted from the payment of excise duty under the Notification No. 38/73 as amended by Notification No 174/73. The Collector of Customs had held in the said case that the goods imported were liable to additional duty under the provisions of Section 2A(1) of the Indian Tariff Act, 1934 holding that the notification was a conditional notification not exempting acrylic sheets in all circumstances but only in certain circumstances specified in the Notification and that conditional exemption cannot be extended

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mysore-petrochemicals-ltd-appellant…

for purposes of countervailing duty to imported materials as per the statutory provisions of the Indian Tariff Act. The learned Single Judge of the High Court of Madras held that in the absence of proper examination or test or denial of the assertions in the review petition, and the affidavit filed in the writ petition and in the face of material produced showing that the same sources specified in the notification had been used by the foreign manufacturer in manufacturing the acrylic sheets, the Collector of Customs could not have taken the view which he had taken. Similarly, in Century Enka Limited and others Vs. Union of India and Two others, on the plain reading of Section 3(1) of the Act of 1975, a Division Bench of the High Court of Bombay held that the countervailing duty u/s 3(1) cannot be levied on an article imported into India if such article manufactured in India is exempt form the payment of excise duty. The Division Bench further held that the provisions of Section 3 have to be read in conjunction with the provisions of Central Excise Act and as such the liability to levy countervailing duty would depend upon the liability to pay excise duty and therefore, it would be futile to urge that the exemption notification issued under the Central Excise Act can have no bearing to determine the liability to pay countervailing duty under the provisions of the Act of 1975.

10. It appears from the unreported decision of the High Court of Bombay in W.P. No. 2399/1984 and Writ Petition No. 1694 of 1985 the copy of which was placed before us for perusal that another Division Bench of the same High Court had taken the similar view as in the case of Ashok Traders Vs. Union of India and another, The learned Single Judge who rendered decision in Writ Petitions Nos. 2399 of 1984 and 1664 of 1985 distinguished both the decisions on facts and declined to hold that in the case of "orthoxylene" imported, the exemption of duty available to the I.P.C.L. would ipso facto entitle the importer of the same substance to claim exemption u/s 3(1) of the Act of 1975.

11. But all this becomes academic in view of the decision of the Supreme Court in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, wherein Section 3(1) of the Act of 1975 fell for direct consideration and its scope and ambit were examined by the Supreme Court. Y. V. Chandrachud, the learned Chief Justice, as he then was, speaking for the Court said as follows at para 7 :

"In the view of the matter, it is unnecessary to consider the various decisions cited at the Bar on the nature and connotation of ''countervailing duty''. We are unable to accept the argument of the appellants that Section 3(1) of the Tariff Act is an independent charging section or that, the ''additional duty'' which it speaks of is not a duty of customs but is a countervailing duty."

The learned Chief Justice further said :

"Section 3(1) of the Tariff Act, 1975 provides a measure of the additional duty, which has to be ''equal to the excise duty'' leviable on a like article if produced or manufactured in India, as defined in the Explanation to that section. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mysore-petrochemicals-ltd-appellant…

measure of a tax or duty cannot determine its nature or character. The brass scrap which is imported into India by the importers of the brass scrap is liable to the levy of additional duty mentioned in Section 3(1) of the Tariff Act, 1975 because, the taxable event is the import of the goods into India and not their manufacture. The duty referred to in Section 3(1) of the Tariff Act, 1975 is, therefore, leviable even if the goods imported into India are not capable of being manufactured in India or are not in fact manufactured in India. The expression ''excise duty for the time being leviable on a like article if produced or manufactured in India'', which occurs in Section 3(1) of the Tariff Act, 1975 means excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs."

12. From the above it is obvious that even in the case where the goods like the imported goods are not manufactured in the country and if manufactured in the country no duty as such is paid, nevertheless, such imported goods would be exigible to the additional duty under u/s 3(1) of the Act of 1975. We may, further, add that the exemption given to I.P.C.L. in exercise of the powers conferred on the Central Government, under the Central Excise Rules read with Central Excise Act, is an exemption available to the beneficiaries under the notification and it cannot ipso facto be extended further to others who are not covered by the notification. As normally understood, the taxing statutes particularly operate in their respective fields and they do not overlap unless a specific provision is made for such overlapping. Therefore, the petitioner-Company cannot claim the benefit of the exemption which is given to encourage the production of commodity which is otherwise in short supply in the country. The exemption cannot be extended to the benefit of the user of that commodity or the raw material who would not only have the advantage of buying it locally but also import it from outside the country. The only benefit extended to the petitioner-Company under the licence granted in its favour is such cost paid on the raw material whether produced within the country or outside the country shall not be included in computing the price on which the excise duty is levied. Therefore, the consumer is also benefited in terms of the licence and he cannot therefore also claim the benefit conferred on the producer of the raw material. Thus viewed, the contention must necessary fail and we must uphold the action taken by the authorities of the Customs.

13. We, therefore, dismiss the writ petition. But in the circumstances of the case, there will be no order to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mysore-petrochemicals-ltd-appellant…