(1989) 01 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 3812 of 1988

New Plastomers India Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-01-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Customs Act, 1962 — Section 25(1)

Citation : (1989) 23 ECR 89 : (1989) 42 ELT 223

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The dispute in the petition is whether the consignments which the petitioners seek to clear from warehouse are Polyphenylene Oxide as described by Item No. 3 in exemption notification dated March 1, 1987 issued under sub-section (1) of Section 25 of the Customs Act and in notification issued under sub-rule (1) of Rule 8 of the Central Excise Rules in respect of countervailing duty Shri Jayakar, learned Counsel appearing on behalf of the petitioners, submitted that the various consignments were imported and were deposited in the warehouse and from time to time were cleared by the Customs authorities on accepting the claim of the petitioners that the goods imported are Polyphenylene Oxide. The grievance of the petitioners is that in respect of the last consignment to be cleared the respondents have raised objection that exemption notification are not available and the ad valorem duty should be paid. Shri Jayakar complains that neither any notice was given not the petitioners were furnished with any material to indicate why the Customs authorities had a change of heart in assessing the imported goods. Shri Shringarpure, learned Counsel appearing on behalf of the respondents, submits that report dated April 5, 1986 was received from Deputy Chief Chemist, Bombay and that indicates that the imported goods are not one which are entitled to exemption. Prima facie it is not possible to accept the submission as even after April 1986 the consignments were cleared on the basis that the goods are entitled to exemption.

2. In these circumstances the best course would be to permit the petitioners to clear the consignments on payment of basic and countervailing duty at the rate of 20% ad valorem each on assumption that the exemption notifications are attracted and applicable. At the same time, it would be open for the respondents to serve a show cause notice upon the petitioners and thereafter pass appropriate order. It hardly requires to be stated that the show cause notice must set out all the material available with the Department to indicate that the goods are not covered by exemption notifications. Pending disposal of the show cause notice, if any to be given by the respondents, the petitioners shall furnish bond for the differential amount in favour of the respondents No. 2. The show cause notice, if any, shall be given within a period of 8 weeks from to-day and the bond would stand discharged in case no such notice is served.

3. Accordingly, petition succeeds and the respondents are directed to forthwith clear the goods on payment of basic and countervailing duty arrived at the rate of 20% ad valorem each. On such clearance the petitioners shall furnish bond in favour of respondents No. 2 for the differential duty calculated between 20% and 100% ad valorem. It is open for the respondents to serve show cause notice within eight weeks upon the petitioners to show cause why ad valorem duty should not be charged.

4. In the circumstances of the case there will be no order as to costs.

