(1998) 02 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 7018 of 1989

N.S. Rathinam and Sons — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:
Constitution of India, 1950 — Article 14
Customs Tariff Act, 1975 — Section 3

Citation : (1998) 102 ELT 251

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : V. Selvaraj, for R.N. Amarnath, for the Appellant; V.T. Gopalan, Sr. Central Govt. Standing Counsel for S. Udayakumar, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The petitioner has challenged the notification issued under the provisions of the Central Excise Act withdrawing exemption which had been granted under an earlier notification, such withdrawal having resulted in the petitioner becoming liable to pay the duty which he could not have had to pay had the earlier notifications been continued unaltered. The first of the notifications relied on by the petitioner was issued on 20-8-1986 by a later notification of 27-3-1987 the benefit which the petitioner could claim by virtue of having imported the ship which was being broken prior to 28-2-1986 was withdrawn, even while continuing the exemption given to goods obtained from breaking up of the ship on which the duty of customs had been paid at the rate of Rs. 1/400/- per light displacement tonnage. The petitioner has paid the duty as also contravailing duty u/s 3 of the Customs Tariff Act, but had not paid the duty at the rate of Rs. 1,400/- per light displacement tonnage.

2. It is not in dispute that the ship which the petitioner had purchased for the purpose of breaking up was purchased in Cochin after that ship had been arrested pursuant to orders issued by the High Court at Bombay and that ship

had been brought to sale. After such purchase the petitioner had questioned the levy of customs duty in the High Court at Kerala but later withdraw the petition and paid the duty. The ship admittedly had reached the Cochin Harbour prior to 28-2-1986. The petitioner was not called upon to pay excise duty from that date till 27-3-1987 as during that period the exemption notification issued on 20-8-1986 was in force.

3. After that notification of 27-3-1987 was published the petitioner was called upon to pay the duty. The petitioner contested the demand. The Assistant Collector having rejected the petitioner''s objections and directed payment, the petitioner filed an appeal to the Collector of Customs, who has his seat at Madras. The appeal was rejected and that rejection has remained unchallenged, petitioner not having questioned that order in this writ petition and also not having filed any appeal against that order to the CEGAT.

4. Learned senior standing counsel for the Central Government raised a preliminary objection regarding the maintainability. He contended that though the two notifications were issued by the Central Government, nevertheless the petitioner has not established that any part of cause of action has arisen in relation to those notifications within the jurisdiction of this High Court and, therefore, the writ petition has to be dismissed in limits, Counsel relied on a decision of the Supreme Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, .

5. Counsel did not dispute the fact that the Central Government is also subject to the jurisdiction of this Court and that even though the notifications have been issued initially at Delhi which is the seat of the Central Government, nevertheless the notification is meant to have effect throughout the territory of India, and that notification is amenable for being challenged in this Court, even as it is in any other High Court in the country. Counsel''s point however is that no cause of action in relation to those notifications has arisen within this State as the ship was purchased at Cochin and the ship continues to lie at Cochin, the customs duty was paid at Cochin and the liability for payment of excise duty also arose at Cochin. The fact that the duty is being quantified or is being collected after due assessment does not in any way alter the basic fact that the liability accrued at Cochin.

6. Counsel for the petitioner on this point submitted that as the order of the Appellate Collector was passed at Madras and the petitioner has its office at Madras, the petitioner is entitled to challenge the notification here. According to him, the petitioner''s residence and the fact that the Collector had passed an order placing reliance on the notification would be sufficient to establish that a part of cause of action arise within this State.

7. It is not possible to accept the submission of learned Counsel for the Central Government that notifications issued by it are only to be questioned in the High Court at Delhi or in the High Court within whose jurisdiction some thing was done

in relation to the notification without any qualification. If it is possible to establish a reasonable link between the notification impugned and some act which is germane any material having occurred within the State that would be sufficient to establish that a part of cause of action has arisen within the State. That test however has not been met by the petitioner on the facts of this case.

8. The liability of the petitioner to pay excise duty arose in the State of Kerala and not within this State. The fact that the petitioner has a residence in this State is immaterial for deciding as to where the liability to pay the duty arises. That liability arises at the place where the goods remained in this case the ship which was broken up and the parts removed. The fact that the Collector of Appeals, Madras considered the appeal filed by the petitioner against an order passed by the Assistant Collector in Cochin, does not by itself provide a cause of action to question the notifications in this Court, as the Collector''s order in appeal not having been challenged here. All that the Collector has done is to affirm the order of the Assistant Collector. For the purpose of considering the prayer of the petitioner, the order of the Collector is of no relevance, whatsoever. His interpretation of the notification cannot bind the Court.

9. This is not a public interest litigation where it can be said that the notification affects a class some of whom are residents within this State and that for whose benefit the classification is filed. The petitioner, therefore, has failed to establish that a part of the cause of action in relation to these notifications has arisen within the State entitling the petitioner to maintain his petition.

10. Even on merits I do not see any substance in the case pleaded by the petitioner. Counsel contended that Article 14 of the Constitution has been violated inasmuch as the later notification extends a benefit to those who had paid duty on ''light displacement tonnage'' basis while denying that benefit to those who had paid the duty at ad valorem basis. Even if that notification is struck down the petitioner can derive no benefit as this Court cannot by striking down a notification also hold that the notification already repealed should stand revived. The repeal of the earlier notification is complete when a new notification is issued and the previous one is repealed. The striking down of the later notification does not result in the repealed earlier notification being restored.

11. It is also not possible for this Court to direct the Central Government to extend the exemption to a class to whom it has not been extended. That is a matter which is entirely within the discretion of the Central Government which has the power to levy the duty under the Act and this duty is payable in the absence of any notification exempting in whole or part the duty levied under the Act.

12. Learned Counsel for the Central Government referred to the decision of the Apex Court reported in Kasinka Trading and another, etc. etc. Vs. Union of India and another, wherein the Supreme Court pointed out the wide discretion available to the Government in the matter of granting, curtailing, withholding,

modifying or repealing the exemptions granted by earlier notifications, and the fact that the Government is not bound to grant exemption to any one if it so desires.

13. The writ petition, therefore, is liable to be and is dismissed. No costs.

