

(2004) 08 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 6060 (W) of 2004

Oriental Tiles Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3

Citation : (2005) 180 ELT 316

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Ajit Kumar Panja and R.N. Das and D.P. Dutta, for the Appellant; Pradip Ghose Biswanath Samaddar and R.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—By this application the writ petitioners in substance want a declaration that additional duty equal to excise duty is not leviable on imported marble materials under the provision of the Custom Tariff Act, 1975 (hereinafter referred to as the said Act). The petitioner has been carrying on business of importing and exporting of polished marble and marble slabs. While carrying on business they import polished marble slabs from different countries namely Oman, Srilanka, Spain, Italy, Greece, Egypt and Turkey observing all legal formalities. The petitioners enjoy exemption from payment of basic customs duty in respect of the import of polished marble slabs from Srilanka on the strength of notification issued u/s 25 of the Customs Act, 1962. The said notification has been issued in view of bilateral free trade agreement entered into by and between Republic of India and Socialist Republic of Srilanka. There is no dispute about the aforesaid fact. The petitioner had hitherto been paying additional duty under the said Act at the rate of 16 per cent of the invoice value. The levy of the additional duty under the said Act is co-related to the excise duty leviable on similar product if produced in this country. The Supreme Court in case of Aman Marble Industries Pvt. Ltd. Vs. Collector of C. Ex., has held following the

previous judgment of the same Court reported in case of Rajasthan State Electricity Board Vs. Associated Stone Industries and Another, amongst others that cutting and polishing of marbles into slabs did not amount to manufacture of goods. The word "manufacture" generally and in the ordinary parlance in the absence of its definition in the Act, should be understood to mean a new and different Article having distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. The cutting and polishing of stones into slabs is not a process of manufacture for obvious and simple reason that no new and distinct commercial product came into existence as the end product still remains same and thus its original identity continue.

2. Mr. Panja learned Senior Advocate appearing with R. N. Das Senior Advocate and Mr. D.P. Dutt learned Advocate in support of this petition contends that the intention of the Government is to make the import of the polished marble slabs duty free either under the Customs Act, 1962 or under any other Act. The bilateral trade agreement as aforesaid has extended the benefit to the exporter of Srilanka into this country. In recognition of this bilateral relationship exemption has been granted from payment of Customs Duty in relation to the import of polished marble slabs either wholly originated from Srilanka or partially. In case of partial origination f.o.b value should not exceed 65 per cent. It is clear from the aforesaid judgment of the Supreme Court, polishing and cutting and sizing of marble slabs do not involve manufacturing process nor the same emerge a new product so as to bring within the purview of Excise Duty under the Central Excise Act.

3. He contends further that the Supreme Court judgment has made it clear that no Excise Duty is leviable on the indigenous similar product. He has drawn my attention to the language of Section 3 of the said Act and contends that tax event under the said Act is closely related to the Tax event of Excise Duty in respect of these materials. There is no separate provision for the mode of calculation or imposition of duty under the said Act and the mode and method as provided in Excise Act is adopted. When the excise duty is not leviable at all on this material, there is no basis for imposition of additional duty.

4. Mr. Pradip Ghosh learned Senior Advocate appearing with Mr. Biswanath Sammaddar and Mr. R. K. Gupta learned Advocates contends that this application is frivolous and motivated.

5. He contends that citing various instances, in the past the writ petitioners had accepted and in fact paid additional duty under the said Act even after the aforesaid Supreme Court judgment being rendered. Now this time as a test case the present writ petition has been filed advancing a far fetched interpretation of Section 3 of the said Act.

6. His further contention is that the excise duty is levied on the manufacture of a product and tax event in that Act has nothing to do with the tax event of the

aforesaid Act. Only the method and mode of calculation of the duty as provided in the Central Excise and its tariff has been adopted and/or followed. It is true in view of the Supreme Court judgment the like material imported by the petitioner manufactured in the country is not excisable to excise duty, but the said Act has been enacted for different purposes and object. Therefore this application should be dismissed.

7. I have heard respective contention of the learned Counsels and considered the materials placed before me, it appears to me that point involved in this case is whether the additional duty equivalent to excise duty of like materials can be levied u/s 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the said Act) in view of the Supreme Court judgment in case of Aman Marble Industries Private Ltd. v. Collector of Central Excise whereby and whereunder cutting of marble blocks into slabs was held not to be "manufactured" for the purpose of the Central Excise Act.

8. Mr. Panja wants to link up the ratio of the decision with the levy of additional duty because of the words used in the Section "is equal to excise duty". Thus Section 3 of the said Act needs to be reproduced.

"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 (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"

9. I am unable to accept the contention of Mr. Panja that the levy of additional duty can be linked up with the levy of excise duty just because the mode of assessment of levy of additional duty has been adopted from that of Central Excise Act. The Supreme Court judgment has been rendered in case of charging of excise duty. According to me tax event under the excise duty occurs when there is a manufacture and/or production of a product and the same is distinguished and different from the raw materials or input. Here tax event occurs the moment it is imported into India and the same is levied in addition to other duties. This legal position is made explicitly clear in Sub-section 5 of Section 3 of the said Act. It is true admittedly the importers like petitioners have been enjoying exemption from payment of basic customs duty on the strength of the free trade agreement between the Democratic Socialist Republic of Srilanka and the Republic of India read with the notification No. 19/2000-Cus. (N.T.), dated 1st March 2000 issued u/s 25 of the Customs Act, 1962. This exemption only applies to basic custom duty for no exemption can be granted u/s 25 of the Customs Act, 1962 in relation to levy of the additional duty of the said Act. There cannot be any automatic exemption because of the trade agreement between the foreign sovereign countries and India, unless such agreement per takes the character of law or such agreement is recognized and accepted under the

provision of law by issuing appropriate notice for exemption.

10. I do not find any provision in the said Act for granting exemption from levy of additional duty. I am of the view that by virtue of the Supreme Court judgment excise duty of the like product cannot be levied but rate mentioned in the schedule for imposing duty cannot be obliterated from the relevant tariff Act. The rate applicable in case of Excise Duty has simply been adopted for levy of Additional duty.

11. Though a casual reference is made to a judgment of Constitutional Bench of the Supreme Court granting exemption from payment of excise duty under the said Act but no such decision has been placed before me.

12. Accordingly I am unable to accept the submission of Mr. Panja that his client is not required to pay additional duty under the said Act. I find substance in the argument of Mr. Ghosh that the present petition is meritless. The petitioners had paid additional duty throughout even after the Supreme Court judgment being rendered. It is true that there cannot be any estoppel as against the provision of law. Unfortunately Mr. Panja's client has not been able to produce any law whereby his client can get exemption from payment of additional duty. Therefore, this writ petition is dismissed and interim order stands vacated. There will be no order as to costs.

13. Mr. Das, learned Senior Counsel appearing for the writ petitioner prays for stay of operation of the judgment and order. Having regard to the points involved in this matter, I feel, I should grant stay and such stay is granted for a period of three weeks from date.

14. Urgent xerox certified copy of the judgment and this order, if applied for, be supplied to the applicant, expeditiously.