(1995) 07 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 1182 of 1987

P. Jayantilal and Co. Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Customs Act, 1962 — Section 25

Citation : (1995) 60 ECR 387 : (1995) 79 ELT 585

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Kapadia, J.—By this Petition, Petitioners seek declaration that raw materials and components imported by the Petitioners against import licence in respect of goods to be supplied to Oil India Limited stands exempted fully from Customs Duty including additional duty u/s 3 of Customs Tariff Act, 1975 in terms of Notification No. 210/82, dated 10-9-1982. Petitioners also seek declaration that Notification No. 513/86 and 517/86 both dated 30-12-1986 shall have no effect with regard to import of goods against the licence issued in favour of the Petitioners.

2. Facts of the case, briefly, are as follows. Petitioners entered into a contract with Oil India Limited. Pursuant to Notification No. 210/82, dated 10-9-1982 under which raw materials and the components required to be imported for manufacture of goods to be supplied to Oil India stood exempted from payment of Customs duties and additional customs duties. The said exemption was for five years upto 10-12-1987. By Notification Nos. 513/86 and 517/86 the original Notification dated 10-9-1982 came to be amended and Customs duty became payable to the extent of 25% and full exemption with regard to the additional Customs duty. It is the case of the Petitioners that Petitioners entered into contract with Oil India in view of the Notification No. 210/82 under which exemption was for five years and, therefore, the Government was not entitled to revoke the said exemption particularly in view of the fact that the said exemption

under Notification 210/1982 was with regard to the Scheme for a specific purpose, namely supply of goods to Public Sector Organisations like O.N.G.C. and Oil India regarding oil exploration. This point has been exphasized by the Petitioners particularly in view of the fact that according to the Petitioners the Judgment of the Supreme Court in Kasinka Trading and another, etc. etc. Vs. Union of India and another, would not be applicable.

3. It is contended on behalf of the Petitioners that in the present case the contract has been entered into by the Petitioners with Oil India in view of the representation, promise and assurance held out by the Government vide Notification No. 210/82. It is contended on behalf of the Petitioners that Respondent No. 1 issued specific import licence on the basis of the Petitioners'' entering into contract under the above Scheme for supply of goods to Oil India a Public Sector Organisation for oil exploration. It is contended on behalf of the Petitioners that therefore in the present case exemption which was granted was in public interest in 1982. It is contended on behalf of the Petitioners that the exemption in the present case is project based and not goods related exemption as is the ordinarily case and as was the case in the matter of Kasinka Trading (supra). It is contended on behalf of the Petitioners that in this type of contract, it is not open to the Respondents to recover duty. It is also contended on behalf of the Petitioners that, in the present case, no affidavit has been filed on behalf of the Respondents to spell out what was the change in public interest which occasioned the issuance of the impugned Notification Nos. 513/86 and 517/86.

4. We do not find any merit in the above contentions advanced on behalf of the Petitioners. Section 25 of the Customs Act empowers the Government to issue Notification granting exemption in public interest. It also has a Statutory power to withdraw Notification or even modify the Notification of exemption in public interest. In the present case, Notification No. 210/82 was issued in public interest. It is expressly so recited. Similarly withdrawal or modification of the said Notification vide impugned notification is also in public interest. In the present case, the goods imported were used as raw material for manufacture of goods which in turn were required to be supplied to Oil India but that will not make any difference. The judgment of the Supreme Court in Kasinka Trading (supra) clearly lays down that where notifications are issued in public interest they can be withdrawn or modified even in public interest. It is true that the Government has not filed any reply to the petition. However, there is nothing to show that the impugned Notifications issued by the Government have not been issued in public interest. There is always a presumption that the Government acts in accordance with law and that it has formed its opinion u/s 25 in public interest. In the present case, that presumption has not been rebutted in any way. In our view whether exemption earlier granted vide Notification No. 210/82 was project based or Scheme based for a particular purpose does not make any difference. In our view judgment of the Supreme Court in Kasinka Trading (supra) clearly applies to the facts of the present case.

5. For the foregoing reasons, there is no merit in the Writ Petition, Writ petition fails. Rule is discharged with no order as to costs.

