**(1987) 06 BOM CK 0023**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1639 of 1981

Patel Aluminium Pvt. Ltd. and another APPELLANT

Vs

Union of India and another RESPONDENT

**Date of Decision :** 29-06-1987

**Acts Referred:**

Customs Act, 1962 — Section 25(2)

**Citation :** (1988) 36 ELT 73

**Hon'ble Judges :** H. Suresh, J

**Bench :** Single Bench

# Judgement

1. A short question which is involved in this matter is this; namely, whether the Government could exempt MMTC, a Government Corporation, from paying customs, duty in respect of import of certain quantity of aluminium ingots while at the same time such an exemption be denied to the petitioners. The petitioner state that this is discrimination and, amounts to violation of Article 14 of the Constitution of India.

2. I may mention that in the petition the petitioners has also asked for a declaration that the said exemption notification dated 18th of April 1980 should be continued to remain in force upto 30th of September 1980. This is on the footing that the petitioners had already placed orders for import of aluminium goods on the strength of such exemption notification and by the time the goods were imported the exemption had elapsed. The petitioners have asked for such a declaration mainly on the ground of promissory estoppel. Mr. Ganesh has rightly stated that it is not possible for him to seek such a relief and, therefore, he did not press for the relief as contained in prayer (a) of the petition.

2. Therefore the only other question is as to whether there is any hostile discrimination as contended by the petitioners. It is interesting to note as to how this plea of discrimination is pleaded and that is as follows :-

"Both the petitioners and the MMTC importers of aluminium rods and ingots and both of them import the same from the open market abroad. The petitioners say that both the petitioner Company and the MMTC are importers of aluminium ingots and rods. They are both, therefore, similarly situated and any favourable treatment accorded to MMTC would be clearly discriminatory, without any just basis or classification and would be arbitrary and without the authority of law. It is also necessary to note that MMTC does not itself consume or use the aluminium ingots imported by it, but merely sells the same to actual users of the item. As MMTC does not pay any additional duty, it is able to sell the imported aluminium ingots at a price which is less than that which has to be paid by actual users who purchase aluminium otherwise than from MMTC or who import it directly. This results in a hostile discrimination being practised against such users of aluminium as compared to those who buy the commodity from MMTC. It is submitted that there is no basis or justification at all for distinguishing between these two groups of actual users of aluminium and treating one very favourably compared to the other. This also is in violation of the fundamental right to equality guaranteed by Article 14 of the Constitution of India."

3. This is rather strange. The notification is not challenged on the ground that the same is not issued in public interest. Therefore it is for the Government to decide as to what goods are to be exempted, when and to what extent. I can also understand if the plea of discrimination was between the MMTC and the petitioners as such, but that is not the case here. Even otherwise, I do not think this plea of discrimination can ever stand scrutiny if one has regard for the exact wording of the notification. The relevant portion of the notification is as follows :-

"I am directed to say that in the light of the shortage of aluminium in the country, 30639 tonnes of aluminium ingots/wire rods is being imported by the Mineral and Metals Trading Corporation, India (MMTC) to meet the shortage of the aluminium in the country. Since the c.i.f. prices of imported aluminium is almost equal to the indigenous prices taking into account the need for distributing it at reasonable price, it has been felt necessary to exempt aluminium from the whole of the countervailing duty of Customs (basic and auxiliary duties of customs are already exempt).

Having regard to the circumstances of exemptional nature as above and in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962, (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so, to do, hereby exempts 30,639 tonnes of aluminium (13,684 tonnes of ingots and 16,955 tonnes of rods) falling within Chapter 76 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and imported by the Metals and Minerals Trading Corporation of India Ltd. from the whole of the additional duty leviable thereon u/s 3 of the said Customs Tariff Act..."

4. In this connection, a reference should be made to the case of H. Jahangir Bhatusha Vs. Union of India (UOI) and Another, . This is a case of the Delhi High Court. A similar contention, as advanced here, was negatived by the Delhi High

 

Court. In that case the exemption was with regard to import of vegetable oil and the Government wanted to keep the domestic price of Vanaspati at reasonable level in this country and that is how the State Trading Corporation was given the said exemption. The Government had also taken note of the fact that the profit margin of the petitioners in those matters on the sale of imported goods in India was higher than the profit margin of the STC and therefore it was felt that with a view to bring the prices down it was necessary to import certain commodities at an international price which was much lower than the price in the Indian market and therefore the Government exempted payment of duty. This was upheld by the Division Bench of the Delhi High Court.

5. In my view, the present case is not different from the case decided by the Division Bench of the Delhi High Court. Here also the Government had taken into account the shortage of aluminium in the country and therefore it felt that 30,639 tonnes of aluminium ingots had to be imported to meet the shortage of aluminium in the country and since the c.i.f. prices of imported aluminium is almost equal to the indigenous prices, taking into account the need for distributing it at a reasonable price, it was felt necessary to exempt aluminium from the whole of the countervailing duty of Customs. In my view, this answers the contention of the petitioners and, therefore, it cannot be said that the impugned notification was unreasonable or the classification was unreasonable. Similarly, it cannot be said that the petitioners and MMTC were in similar situation. The whole object of import was to see that the price in the local market is reduced.

6. In the view that I have taken, it has not become necessary for me to refer to the other cases cited by both the counsel.

7. I, therefore, pass the following order :-

Rule discharged. However, in the circumstances of the case, there will be no order as to costs.

 