(1955) 07 BOM CK 0006

In the Bombay High Court

Case No : Misc. Petition No. 141 of 1955

Ramchand Sobhraj Wadhwani APPELLANT

Vs

B.N. Banerji RESPONDENT

Date of Decision : 05-07-1955

Acts Referred:

Sea Customs Act, 1878 — Section 191

Citation : (1955) 07 BOM CK 0006

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Advocate : Seervai, for the Respondent

Judgement

1. This is a petition for a mandamus restraining the Collector of Customs from levying a duty higher than 30 per cent and requiring him to release certain consignment of fountain pens on payment of duty of 30 per cent.

2. The question involved in the determination of this petition is a very simple one and the acts which are relevant are very few. The petitioner imported a consignment of sheaffer''s fountain pens. "Fountain pens complete" are chargeable under item 45(3), in the First Schedule to the Indian Tariff Act at 30 per cent ad valorem duty, and the duty that has been sought to be imposed upon this consignment is 78 3/4 per cent under item 61(8) which refers to "articles plated with gold or silver", the question for determination is whether this consignment fell within item 45(3) or within item 61(8).

3. Before dealing with the question of interpretation, I must deal with two preliminary objections raised on behalf of the respondent by Mr. Seervai. His first objection is that the Petitioner has another adequate and specific legal remedy in that an appeal lies to the Government u/s 191 of the Sea Customs Act. Now, if what the petitioner contends is true, viz., that obviously item 45(3) applies to this consignment; the order of the Collector of Customs imposing a duty at 78 3/4 per cent on this consignment would, in my opinion, be an order without

jurisdiction, and (it is not necessary for the petitioner) to exhaust the rights given to him by way of appeal before he comes to Court and applies for a writ.

4. The next preliminary objection that has been urged by Mr. Seervai on behalf of the Respondent is that as far back as 1942 the Central Board of Revenue had given a ruling that when a pen owes the major part of its value to plated part it should be assessed to duty under item 61(8) and as, such rulings are published for the benefit of the public, the challenge to this ruling is much too late. Now, to begin with, the rulings of the Central Board of Revenue have no binding effect in law except of course on the officers who are bound to obey them. But in any event so long as that ruling had not been applied to the goods of the Petitioner he could have had no cause to complain about it nor could he seek any relief in respect of it. It is not suggested that any prior consignment of fountain pens imported by the Petitioner was subjected to duty at 78 3/4 per cent under the ruling relied upon, and therefore there could have been no opportunity at any time for the petitioner to challenge this ruling, assuming it was necessary to challenge it before he could succeed in this petition.

5. Turning now to the merits of the petition, item 45(3) relates to "Fountain pens, complete", and it appears to me to be plain that "fountain pens complete" include fountain pens which may have plated parts of silver or gold as well as fountain pens which did not have any such parts, so long as they are "fountain pens complete". When you next turn to item 61(8), the item is "Articles, other than cutlery and surgical instruments, plated with gold or silver". Now, there is an infinite variety of articles which may be plated wholly or in part either with silver or gold, and it cannot be that if any of such articles were to be subjected to duty under item 61(8) and not under the specific item applicable to such article. "Fountain pens complete" is a specific article while plated articles are a class of articles which comprises within its scope articles far too numerous to enumerate, and when there is provision for taxation of a specific article, it would in my opinion, be certainly not permissible to resort to any other article for the purpose of taxing it by having regard to one of its features which may be common, such as for instance in this case the plated parts. A guide to the interpretation of the items in the Schedule is provided in the Indian Customs Tariff itself in Note 3 which is as follows :

"The description of tariff-valued articles in the second column follows the ordinary trade description and covers all reduced grades and mixtures, unless they are specifically provided for."

6. Now, in my opinion, it cannot for a moment be suggested that fountain pens which have a gold cap or nib are described in the trade as articles plated with gold and not as fountain pens; and adopting this key to the interpretation of the items in the Schedule which is provided by the Indian Customs Tariff itself, it is quite plain that it is quite impossible for any one to come to the conclusion that "fountain pens complete" can fall within the description "articles plated with gold or silver" because no ordinary man nor any one in trade could conceivably refer

to fountain pens with gold or silver caps or gold nibs as articles plated with gold.

7. Mr. Seervai has attempted to argue that if this were the correct view of the interpretation of item 45(3), some one might import a fountain pen studded with diamonds, diamonds being subject to a very high duty under another item in the Schedule. An extreme case of that kind does not help one to interpret the items in the Schedule; but if we did have a case of an attempt to smuggle diamonds in the shape of a fountain pen, I have no doubt that obviously such a "fountain pen" would not satisfy the description of a "fountain pen complete" because the real value of it would not lie in its use as a fountain pen but in the diamonds with which it was studded. It is not suggested in the affidavits that the real value of a gold fountain pen lies in the gold cap. I suppose a fountain pen writes as well with or without a gold cap, and so long as the article that is imported is valued for its use as a fountain pen and not for any superficial and extra-ordinary additions such as diamonds, I do not see that it can be said that it is not a "fountain pen complete".

8. Mr. Seervai has drawn my attention to a ruling of the Central Board of Revenue regarding the interpretation of item 45(3) and that ruling is that fountain pens having parts, such as nib, band, clip, filling lever or cap, made of, or plated with, precious metal should, except when they owe the major part of their value to this feature, be assessed under this item. Now, of course as I said earlier, the rulings of the Central Board of Revenue do not have the authority of law; but in so far as this ruling attempts to lay down that where fountain pens owe the major part of their value to having parts made of or plated with precious metal they are to be subjected to tax under an item other than 45(3) it seems to me that it goes beyond the scope of the item in the Schedule. The true test can only be "does the value of the article lie in the fact that it has some addition or additions to it ?" and if the real value is in the fact that it is a fountain pen and the real value is not in anything else, in my opinion, quite obviously "Fountain pen complete" covers such fountain pen and it must be subjected to duty under item 45(3).

9. Mr. Seervai has rightly contended that questions of a disputed interpretation of a section will not ordinarily be determined on a writ petition; but in this case it appears to me that the interpretation of item 45(3) can only be one and it is not reasonably possible for any person to take a contrary view. This, in my opinion, is not a case of competent authority having come to one of two possible conclusions. This is a case of a competent authority having usurped jurisdiction by wrongly interpreting an item which is not capable of such an interpretation.

10. In my opinion, therefore, the consignment can only be subjected to duty at 30 per cent ad valorem under item 45(3) and therefore a mandamus shall issue restraining the respondent from enforcing payment of any duty higher than 30 per cent and directing him to release the goods in so far as they have been detained for payment of duty upon payment of 30 per cent duty. Respondent to pay the petitioner''s costs fixed at Rs. 250.

