(1993) 07 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 2157 of 1984

Raymond Woollen Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-07-1993

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (1993) 68 ELT 34

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

Pendse J.

1. The petitioners filed 14 different applications for refund of duty paid in respect of import of (a) Sorbitol (b) Propylene Glycol and (c) Paraphenetidine. The petitioners were claiming that the three items were drug intermediates entitled to the benefit of Notification dated March 1, 1975. The Assistant Collector of Customs by order dated September 12, 1980 dismissed all the applications on the ground that the three items imported are not drug intermediates and are not entitled to exemption under the notification. The Assistant Collector further held that all the applications were filed beyond the period of limitation prescribed u/s 27 of the Customs Act.

2. The petitioners preferred appeal before the Appellate Collector of Customs and by order dated December 18, 1980 the appeal was partly allowed. The Appellate Authority held that sorbitol was a drug intermediate and was entitled to the benefit of exemption notification and the duty recovered in respect of import of sorbitol was without authority of law. In pursuance of the order of the appellate authority it is not in dispute that duty recovered in respect of the import of sorbitol was refunded to the petitioners. As regards the other two items the appellate authority held that the said items are not drug intermediates and the petitioners are not entitled to the benefit of exemption notification.

Against the order of the appellate authority holding that the two items imported by the petitioners are not drug intermediates, the petitioners preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The appeal was dismissed by order dated August 7, 1984 on the ground that the refund claims filed by the petitioners were barred by limitation prescribed u/s 27 of the Customs Act. The Tribunal did not examine the claim of the petitioners on merits as to whether propylene glycol and paraphenetidine are drug intermediates. The order of the Tribunal is under challenge in this petition filed under Article 226 of the Constitution.

3. It has now been repeatedly held by catena of decisions that though the limitation prescribed u/s 27 of the Customs Act is attracted, when refund applications are considered by authorities created under the stature, the limitation does not apply when the assessee approaches this Court in writ jurisdiction. In view of this decision, the order of the tribunal cannot be sustained. Mr. Desai, learned counsel appearing for the respondents, submitted that the petitioners are not entitled to refund as a matter of right because the Tribunal has not recorded any finding that propylene glycol and paraphenetidine are drug intermediates and are entitled to the benefits of exemption under the notification. Mr. Desai submitted that the question of grant of refund can arise only after such finding is recorded and, therefore, it is necessary to remit the matter back to the Tribunal to determine the contentions raised by the petitioners, as regards the character of the goods imported, on merits. Mr. Desai further submitted that even assuming that the benefit of exemption notification is available, it is further required to be ascertained whether refund could be granted under the amended provisions of Section 27. The submission is correct and the matter will have to be remitted back to the Tribunal.

4. Accordingly, petition is partly allowed and the order dated August 7, 1984 passed by the Tribunal and copy of which is annexed at Exhibit "K" to the petition is set aside and the proceedings are remitted back to the Tribunal, as now in existence, for fresh decision. The Tribunal will proceed to examine :

(a) Whether the imported items i.e. Propylene Glycol and Paraphenetidine are drug intermediates ?

(b) Whether these items if drug intermediates, are entitled to the benefits of exemption notification; and

(c) If so, whether the petitioners are entitled to refund in accordance, with the amended provisions of Section 27 of the Customs Act.

It is made clear that the tribunal shall proceed to determine these questions without taking into consideration the limitation prescribed u/s 27 of the Act. As the proceedings are pending from 1979 onwards, the Tribunal is requested to finally decide the matter expeditiously and as far as possible before the expiry of six months from the date of receipt of the order. In the circumstances of the case, there will be no order as to costs.