(1988) 06 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 2516 of 1982

R.B. Chemicals APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 30-06-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1988) 3 BomCR 675 : (1988) 18 ECC 31 : (1988) 18 ECR 452 : (1988) 37 ELT 173

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : Nitin R. Kantawala, for the Appellant; Bhulchandani, for the Respondent

Final Decision : Partly Allowed

Judgement

Sujata Manohar, J.—The petitioners imported 50-U metric tonnes of P.V.C. (Poly Vinyl Chloride) from Kores. The goods arrived by vessel s.s. "Morning Park," in October 1982. The petitioners presented 15 bills of entry for home consumption, all dated 26th October, 1982. The Customs Authorities purported to levy, what was then known as countervailing duty (now called additional duty) at the rate of 5% on the countervailing duty of 35% payable on these goods. The countervailing duty of 35% ad valorem was charged in view of a similar rate of duty payable on these goods under the Central Excise Rules, 1944 read with an Exemption Notification of 28-2-1982.

2. Under the Exemption Notification bearing no. 55/82 and dated 28-2-1982, it is provided as follows:

"Partial, exemption to artificial or synthetic resins and plastic materials and cellulose esters and others. In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the Notification of the Government of India in the Ministry of Finance (Department of

Revenue) No. 62/76-C.E. dated 16-3-76 the Central Government hereby exempts goods of the description specified column (2) of the Table below and falling under sub-item (1) column (2) of Item No. 15-A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty specified in the corresponding entry in column (3) thereof.

TABLE

____ S.
Description Rate of No. duty

____

1. Polyvinyl Chloride Thirty-five per Cent a ad valorem 2. Polypropylene Twenty-seven percent ad valorem 3. Others Forty per cent ad valorem"

____

As a result Poly Vinyl Chloride is exempted from so much of the duty the excise leviable thereon as is in excess of 35% ad valorem.

3. Under the Finance Act, 1982 u/s 50 special duties of excise have been levied. u/s 50 in the case of goods chargeable with a duty of excise under the Central Excises Act, there shall be levied and collected a special duty of excise equal to ten percent of the amount so chargeable on such goods.

4. In the represent case at the material time the rate of special excise duty on P.V.C. was a reduced rate of 5% of the amount chargeable. Under sub-section (4) of section 50 the provisions of the Central Excise Act and the rules made hereunder, including those relating to refunds and exemptions from duties shall apply in relation to the levy and collection of the special duties of excise also. In view of sub-section (4) the partial exemption notification of 28th February, 1982 would cover special duty of excise also.

5. In the case of Century Enka Limited and others v. Union of India and two others, reported in 1982 E.L.T. 64 (Bom.) a Division Bench of this High Court was required to consider, inter alia, the question whether additional duty levied u/s 3 of the Customs Tariff Act was different from the countervailing duty. It held that no distinction could be drawn between the two. It also held that liability to pay countervailing duty would depend upon the corresponding liability to pay excise duty in respect of local goods. Hence an exemption notification under the Central Excises Act has a direct bearing on the liability to pay countervailing duty under the Customs Tariff Act.

6. In the case of Modi Rubber Ltd. v. Union of India and others, reported in 1983 E.L.T. 24 (Del.), the Delhi High Court was required to consider an exemption Notification under the Central Excise Act. It was urged before the Delhi High Court that exemption from excise duty would not include exemption from special excise duty under a special enactment or an additional excise duty under a Finance Act or an auxiliary duty under a statute. The Delhi High Court negatived this contention. It held that the words in the exemption Notification "from so much of the duty of excise leviable thereon as is in excess" would cover all kinds

of duties of excise including a special duty of excise levied under the Finance Act.

7. In the present case, therefore, the exemption notification of 28-2-1982 exempts P.V.C. from payment of so much of the duty of excise as exceeds 35% ad valorem. The total duty of excise leviable on P.V.C. therefore, including special excise duty, cannot exceed 35% ad valorem. Correspondingly countervailing duty which was then leviable on these goods when imported also could not exceed 35% ad valorem. The Customs Authorities were therefore not entitled to levy an additional duty of 5% over the 35% countervailing duty on the goods on the ground that such special excise duty was leviable on locally manufactured goods. It was not so leviable.

8. My attention was drawn by Mr. Bhulchandani, learned advocate for the respondents to a judgment of the Kerala High Court in Writ Appeal No. 226 and 247 of 1983, in the case of The Rajalakshmi Mills Ltd. and others v. Union of India, Ministry of Finance and others, dated 10th October, 1983 and delivered by a Division Bench of the Kerala High Court, consisting of the Acting Chief Justice Mr. Bhaskaran and Mr. Justice V. Bhaskaran Nambiar. The Kerala High Court was required to consider a Customs Notification under which the goods in question were exempt "from so much of the duty of customs leviable thereon under the said first schedule as is in excess of 10% ad valorem." It was urged before the Kerala High Court that the duty of customs include countervailing duty, additional duty etc. which are to be considered as customs duties. The Kerala High Court emphasised the following words in the exemption notification before it : "the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act of 1975 ". This duty of customs was held not to include other kinds of customs duties which are prescribed either u/s 3 of the Customs Tariff Act or under the Finance Act. The decision of the Kerala High Court turned entirely upon the language of the Customs Notification before it where the Notification granted exemption only from so much of the duty of customs prescribed under the First Schedule to the Customs Tariff Act as was in excess of 10% ad valorem.

9. The Notification in the present case is worded quite differently. The Notification in the first place describes the goods which are exempted, with reference to the description that is found in sub Item (1) of Item 15-A of the First Schedule to the Central Excise and Salt Act, 1944. It then goes on to say that goods of this description are exempt from so much of the duty of excise leviable thereon as is in excess of the duty which specified in the table forming part of the notification. There is therefore, no limitation imposed nor the exemption granted with reference to the rate of duty as prescribed in the first schedule. This is an exemption from the total duty of excise. Special duty of excise is as much a duty of excise as the basic duty. It is, therefore, covered by the Exemption Notification.

10. Mr. Kantawala learned Counsel for the petitioners, does not press any other points as the same have been concluded against the petitioners by reason of the decision of a Division Bench of this High Court in the case of Ashok Traders Vs. Union of India and another, .

11. The petition is therefore partially allowed and the rule is made absolute in terms of prayer (a) (iii).

In the circumstances there will be no order as to costs.

