(1993) 06 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 2091 of 1983

R.D. Alloys APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 18-06-1993

Acts Referred:
Customs Act, 1962 — Section 2(23), 2(27), 25

Citation : (1993) 48 ECR 559 : (1993) 67 ELT 53

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

Bench : Division Bench

Judgement

Pendse, J.—The petitioners imported ferro nickel (ferro alloys) and the item was liable to payment of Customs duty under Item No. 73.02 of First Schedule to the Customs Tariff Act, 1975. The Central Government had issued notification dated January 1,1981 in exercise of powers conferred under sub- section(1) of Section 25 of the Customs Act granting total exemption in respect of import of ferro nickel. The petitioner had booked purchase order on December 14,1982 and the ship carrying the imported cargo entered territorial waters on March 22,1983. The petitioners filed bill of entry for warehousing on the same day and the goods were warehoused. Subsequently, on August 3,1983, the petitioners filed bill of entry for home consumption. By that time, the exemption notification dated January 8,1981 was rescinded and a fresh notification dated July 19,1983 was published withdrawing the exemption.

2. The Collector of Customs demanded duty from the petitioner on filing of bills of entry for home consumption on August 3, 1983. The petitioners claimed that the notification granting total exemption was in existence when the ship carrying the imported goods entered the territorial waters and merely because the subsequent notification provides for levy of duty, it is not permissible for the Collector to demand duty. The contention was not accepted and that gave rise to the filing of the present petition under Article 226 of the constitution of India. The petition was admitted and the petitioner were permitted to clear the goods

without payment of any duty but on executing the bond and furnishing Bank guarantee for the amount of duty claimed by the Collector.

3. Shri Bansal, learned counsel appearing on behalf of the petitioners, submitted that the issue raised in the petition is no longer res integra and stands concluded by decision of Full Bench of this Court reported in 1985 (22) Excise Law Times 644 Apar private Ltd. and Others v. Union of India and others. The submission is correct and deserves acceptance. The Full Bench held that if goods are wholly exempt on the date when they entered the territorial waters of India, no duty is leviable even if the exemption is subsequently withdrawn. In view of the decision of the Full Bench, the petitioners must succeed.

4. Accordingly, petition succeeds and rules made absolute in terms of prayer (a). As the petitioners had already cleared the goods, the only order now required to be passed is that the bond executed and the Bank guarantee furnished by the petitioners to stand discharged but only after payment of landing charges. In the circumstances of the case, there will be no order as to costs.