(1993) 06 BOM CK 0071

In the Bombay High Court

Case No : W. P. No. 1621 of 1983

R.K. Chemicals APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-06-1993

Acts Referred:
Customs Act, 1962 — Section 25

Citation : (1993) 48 ECR 380 : (1993) 67 ELT 79

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

Bench : Division Bench

Advocate : Shri D.H. Mehta and Mr. N.M. Shah, for the Appellant; Shri R.C. Master, for the Respondent

Judgement

Pendse, J.—The petitioner are carrying on business of import and exports in varieties of goods. The petitioners imported goods known as Glyoxalin 40% in pursuance of three R. E. P. licences, all dated March 26,1982. The three import licences permit import of synthetic tanning agent. On import, the petitioners filed bills of entry for clearance for home consumption, but the respondents declined to permit clearance as the petitioners were claiming advantages of Exemption Notification dated February 10,1979 issued in exercise of powers conferred by sub-section (1) of Section 25 of the Customs Act. The refusal of the Department gave rise to the filing of the petition.

2. The learned Single Judge while admitting the petition relied upon the report of the Deputy Chief Chemist which was, inter alia, in favour of the claim of the petitioners in respect of the nature of the goods imported and then granted clearance unconditionally. Shri Mehta, learned Counsel appearing on behalf of the petitioners, submitted that the exemption notification specifically provides that the goods specified in the table are exempted in public interest from payment of duty and Item No. 2 in the table is ''syntans''. It is not in dispute that the goods imported by the petitioners are synthetic tanning agents and squarely falls in item described at Serial No. 2 in the table attached to the exemption notification.

Shri Mehta submits that the refusal of the Department to grant the benefit of the exemption notification is correct and deserves acceptance.

Shri Master, learned Counsel appearing on behalf of the Department, submitted that the advantage of the exemption notification is available provided the goods imported are used in the leather industry and there is nothing on record to indicate that the petitioners were going to use it in leather industry. The submission is entirely misconceived because at the stage of clearance of the goods from the Customs barrier, it is not for the Customs authorities to examine as to how the goods will be used. In case, subsequently, the Customs authorities felt that the goods are used in the leather industry then it is always open for the respondents to adopt appropriate proceedings to recover duty which was not recovered because of the exemption notification. In our judgment, the action of the Department in not clearing the goods was entirely misconceived and the petitioners are entitled to the relief.

3. Accordingly, petition succeeds and rule is made absolute in terms of prayer (a). In the circumstances of the case, there will no order as to costs.

