(1980) 01 MAD CK 0057

In the Madras High Court

Saigal Industries APPELLANT

Vs

Central Board of Excise and Customs and Another RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:
Tariff Act, 1934 — Section 130, 2, 2(A), 2A(1)

Citation : (1980) CENCUS 455 : (1980) 6 ELT 547

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—The petitioner imported Acrylic plastic sheets from various places like Japan, U.S.A. etc. These Acrylic sheets are

manufactured from Methyl Methacrylate Monomer. Under Sec. 2 read with item 82(3) of the First Schedule to the Indian Tariff Act, 1934,100%

ad valorem basic excise duty was leviable on these imports and that had been paid. Under Sec.2(A) of the same Act, countervailing duty at 40%

ad valorem was also levied on these imports. It appears, by a Notification No. 38/73,Central Excise, dated 1st March, 1973, as subsequently

amended by Notification No. 174/73, Central Excise, dated 8th September 1973, the Central Government exempted from the whole of the duty

of excise leviable on acrylic sheets manufactured in India, subject to the following condition, viz, that they are made of (1) artificial resins or plastic

material in any form falling under item 1 of item 15(A) on which the appropriate duty of excise or the additional duty under Sec.2-A of the Indian

Tariff Act, 1934 (32 of 1934) as the case may be, has already been paid; and/or (2) scrap or plastics, and/or (3) methyl methacrylate monomer.

When the petitioner came to know of this notification, he filed a review application on 16th January 1976 to the Central Board of Excise and

Customs, New Delhi, claiming that in view of that notification, no countervailing duty was payable in respect of acrylic sheets imported by him, and

prayed for modifying the order of the Assistant Collector of Customs, levying the countervailing duty in respect of 10 items of imports made during

the period from 20th January 1974 to 4th January 1975.This application for review, which was in time, was forwarded by the Central Board of

Excise and Customs to the Collector of Customs for disposal. It is not in dispute that as delegated authority, the Collector of Customs is the

competent authority to deal with the review application filed u/s 130 of the Customs Act. Before the Collector of Customs, the petitioner also

produced certificates from the manufacturers abroad certifying that the goods manufactured by them and supplied to the petitioner which were

imported, in respect of which the countervailing duty was levied on import, were manufactured from Methyl Methacrylate Monomer. By an order

dated 9th February 1977, the Collector of Customs, dismissed his review petition, with the following observations- "" Under the relevant

notification No. 38/73 dated 1st March 1973, acrylic sheets are exempt from Central Excise duty only when they are produced out of material

resulting from 3 different sources specifically mentioned in the Notification. It is true that acrylic sheets in India are not manufactured by a process

other than those 3 enumerated in the notification. However, technically, manufacture of acrylic sheets from materials outside the enumerated 3

sources is a feasible things. Whether such technical feasibility is also a commercially viable proposal I do not know . As Collector of Customs, I

could give interpretation only to statutory notifications. As notification presently stands, it will have to be deemed a conditional notification which

does not exempt acrylic sheets in all circumstances but only in certain specified circumstances. The benefit of such conditional exemptions cannot

be extended for purposes of c.v. duty to imported materials as per statutory provisions of the Customs Tariff Act"" its predecessor Act"".

2.The petitioner has filed the present writ petition praying for the issue of a writ of certiorari to quash this order of the Collector of Customs and for

a Mandamus directing the Collector to refund the countervailing duty. Sec.2A (1) of the Indian Tariff Act, 1934,under which the countervailing

duty was levied in addition to the basic customs duty, read as follows-

2 -A(1) Any article which is imported into India shall, in addition, be liable to duty (hereinafter in this section referred to as the additional duty)

equal to the excise duty for the time being leviable on a like article if produced or manufactured in India (and if such excise duty on a like article is

leviable at any percentage of its value (the additional duty) to which the imported article shall be so liable shall be calculated at that percentage of

the values of the imported article).

Explanation: (In this section) the expression ''the excise duty for the time being leviable on a like article if produced or manufactured in India

''means would be leviable on a like article if produced or manufactured, which would be leviable on the class or description of articles to which the

imported article belongs and where such duty is leviable at different rates, the highest duty.

3. It is not necessary to extract the other clauses in the section, as the levy was not in pursuance of any other Central Government notification. It

may be seen from this provision that in order to attract the liability for payment of countervailing duty, an excise duty shall be leviable on a like

article,if produced or manufactured in India. If no excise duty was payable on like article if produced or manufactured in India, no countervailing

duty also would be payable .The Notification, which I have already referred to, has exempted acrylic sheets if manufactured in India from the

whole of the duty of excise leviable therein, subject only to the condition that they are manufactured out of the material referred to in the condition.

It was the case of the petitioner that acrylic sheets imported by it were made from Methyl Methacrylate Monoer. Therefore, if the goods of the

description which the petitioner had imported were produced or manufactured in India, it could not have been subjected to any levy of excise duty

by reason of the notification and therefore no countervailing duty was also leviable. I have already extracted almost the whole of the order of the

Collector. It is not clear as to what the Collector meant on that portion of the order. The Collector seems to be of the view that under the

notification acrylic sheets in all circumstances are not exempt from excise duty, that it is a conditional cannot be extended for the purpose of

countervailing before the Collector certificates from foreign manufacturers that the acrylic sheets, which he review petition also he had stated that the acrylic sheets imported by him, were made out of Methyl Methacrylate Monomer. In the affidavit filed in support of the present writ petition

also, he had asserted this fact. Thee was no denial in the counter affidavit on this aspect. The Collector also in his order had not stated that the

acrylic sheets imported by the petitioners were made of methyl methacrylate monomer. At the time of import. samples were drawn from each and

every consignment for test in the local customs laboratory. Since at the time, the question as to liability of the countervailing duty is not arise for

consideration, probably the Department did not test them in their laboratory. But what is more relevant is, that in spite of the petitioner producing

the certificates from the various manufacturers abroad and his assertion in the review petition, the Collector neither disputed the certificates nor

gave any finding that the acrylic sheets imported by the petitioner were not made from methyl metharclate monoer. But the collector seems to have

approached the question from the possibility of acrylic sheets being manufactured in India from out of some other material, which is not referred to

in the notification, and those acrylic sheets would have been liable o excise duty. The collector also seems to be of the view that if excise duty was

leviable on acrylic sheets manufactured from any other material, the countervailing duty also is payable. This approach of the materials other than

those mentioned in the notification is liable for excise duty, that itself will not attract Sec. 2(A). As already seen, if only excise duty is leviable on

like"" article if produced or manufactured in India, then countervailing duty is payable. Therefore unless the Collector is able to find that the acrylic

sheets imported by the petitioner were not manufactured out of the three processes mentioned in the notification the countervailing duty could not

have been levied. On the materials available, there is only one view possible and that was never disputed by the Department at any time that the

imported acrylic sheets were made from methyl methacrylate monomer. In those circumstances the petitioners was not liable to pay any

countervailing duty. Accordingly the order of the collector dated 9th February 1977 and the levy of countervailing duty is set aside. Though the

petition had prayed also for a mandamus to direct the refund of the countervailing duty, it is not necessary for me to give any particular directive,

since I have no doubt that in view of the decision that no countervailing duty is payable the Department will now refund the money. The writ petition is accordingly allowed as stated above. there will be no order as to costs.