(1988) 03 BOM CK 0014

In the Bombay High Court

Case No : O.S. Writ Petition No. 711 of 1982

Sealol Hindustan Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-03-1988

Acts Referred:

Customs Act, 1962 — Section 27

Citation : (1990) 26 ECC 50 : (1988) 17 ECR 186 : (1988) 36 ELT 283

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

1. The petitioners manufacture mechanical seals which can be used only in Centrifugal pumps and compressors. For this purpose they have a collaboration agreement with M/s. E.G. & G. Sealol Incorporated of the United States of America. The petitioners import various parts which are required for the manufacture of such mechanical seals. These parts are :

(a) Ceramic Rings,

(b) Sealide Rings,

(c) Springs,

(d) Spring Retainer,

(e) GFT insert,

(f) Bellows Cores,

(g) Carbon Blanks,

(h) Rotary Head 670,

(i) Teflon Bellows,

(j) Grafoil Packing,

(k) Set Screws,

(l) ''O'' Rings,

(m) Carbon Seal Rings,

(n) Mating Rings,

(o) Seal Sub-Assembly,

(p) Stationary Seal Assembly,

(q) Rotary Assembly,

(r) Seal Components,

(s) Type 43 Components :- (i) Carbon Seal Face, (ii) Band, (iii) Shell, (iv) Friction Ring, (v) Spring, (vi) Spring holder, (vii) Ceramic Ring, (viii) Seat Gasket.

The Commissioner of Industries, Gujarat State has issued a certificate dated 16th October, 1981 certifying that these parts are utilised by the petitioners for their end product, namely, mechanical Seals used for Centrifugal pumps and compressors.

2. Prior to August 1976 the parts imported by the petitioners were classified under tariff item 72(3) of the Customs Tariff under the Indian Customs Tariff Act, 1934. As from 2nd August, 1976 the new Customs Tariff Act of 1975 came into operation. Under this Act the Import Tariff schedule was revised to bring it in line with the Brussels Tariff Nomenclature.

3. After coming into force of this Act the above components imported by the petitioners have been classified under various tariff entries as set out in paragraph 11 of the petition. The petitioners, in this petition pray for a declaration that those parts which are imported by them should be declared as falling under Tariff Item 84.10(1) or 84.11(1) as the case may be; that the orders and Bills of Entry as set out in the prayer should be set aside and a refund of excess duty as summarised at Exhibit ''SP'' amounting to Rs. 36,77,455.56 be granted. The refund asked for covers the period 1st of July, 1975 to 11th September, 1981. The petitioners however, do not press for any refund prior to 2nd August, 1976 when the new Act came into force.

4. Section XVI of Schedule 1 to the Customs Tariff Act, 1975 deals with Machinery and Mechanical Appliances; Electrical equipment and parts thereof. Chapter 84 forms a part of Section XVI. It pertains to Boilers, Machinery and Mechanical appliances, parts thereof. Items 84.10 and 84.11 are as follows :

"84.10 : Pumps (including motor pumps and turbo pumps) for liquids, whether or not fitted with measuring devices, liquid elevators of bucket, chain, screw, band and similar kinds;

(1) Not elsewhere specified.

(2) Delivery pumps fitted with measuring or price calculating mechanism, such as are used for supplying petrol or oil, and pumps specially designed for lubricating and washing of vehicles; manually operated pumps.

(3) Fuel, oil or water pumps for internal combustion piston engines including fuel injection pumps).

84.11 : Air pumps, vacuum pumps and air or gas compressors (including motor and turbo pumps and compressors, and free-piston generators for gas turbines); fans blowers and the like;

(1) Not elsewhere specified

(2) Gas compressors imported for use in airconditioning equipment

(3) Gas compressors imported for use in refrigerating equipment

(4) Exhaust fans and blowers of not less than 65 centimeters sweeps; flameproof fans and blowers

(5) Fans and blowers not falling within sub-heading (4)."

Item 84.65 is as under :

"84.65 : Machinery parts, not containing electrical connectors, insulators coils, contacts or other electrical features and not falling within any other heading in this Chapter."

Centrifugal pumps fall under Item 84.10 (1) while compressors fall under Item 84.11(1).

5. Under Notes to Section XVI, Note 2 prescribes rules for classification of parts of machines. The relevant rules are :

"Note 2 :

(a) goods of a kind described in any of the Headings of Chapters 84 and 85. ...... are in all cases to be classified in their respective Headings.

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same Headings....... are to be classified with the machines of that kind......

(c) all other parts are to be classified in Heading No. 84.65 or 85.28."

6. Mechanical seals which are specifically designed by the petitioners for centrifugal pumps or compressors and can be used only with centrifugal pumps or compressors fall by virtue of Note 2(b) under the Heading 84.10(1) or 84.11(1). They are parts used in such pumps or compressors.

7. In the Statement of Objects and Reasons of the Customs Tariff Act, 1975, it is stated that the Customs Tariff under the Customs Tariff Act, 1975 is designed to bring it in line with Brussels Tariff Nomenclature, making such contractions or

expansions thereto as were necessary to suit the needs of India. Section XVI of the Brussels Tariff Nomenclature deals with Machinery and Mechanical Appliances, Electrical Equipment; Parts thereof. In Section Note (2) which is similar to our Section Note 2, it is provided, "In general, parts which are recognisable as specialised to or mainly for use with particular machines or apparatus...... or with a group of machines or apparatus falling in the same heading, are classified under the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (l) above." Exclusions are not relevant for the present purpose. If further states, "Other parts which are recognisable as such, but are not recognisable as specialised to or mainly used with a particular machine or class of machines...... are classified in heading 84.65 (if not electrical) or in heading 85.28 (if electrical).....". Under heading 84.10 of the Brussels Tariff Nomenclature, which is similar to our Customs Tariff Item 84.10, examples of parts of machines falling under this heading are also give. Centrifugal pumps are included under the heading 84.20 under sub-head C. There is a sub-head "Parts". It states, "Subject to the general provisions regarding the classification of parts (see General Explanatory Note to Section XVI), parts of the goods falling in this heading are also classified here". Among the examples which are given are pumping rods and diffuser vanes which are obviously parts used in centrifugal pumps

8. Under our customs tariff also parts which are designed for use in centrifugal pumps or compressors, had then been imported, would have fallen under tariff entry 84.10(1) or 84.11(1) as the case may be. Mechanical seals specially designed for use in such pumps and compressors are parts of such pumps and compressors and would fall under tariff entry 84.10(1) or 84.11(1).

9. Under Customs Notification No. 179 dated 4.9.1980, as amended, from time to time exemption from a portion of the Customs duty as set out in the notification, is given to parts of any article falling under certain specified headings of chapters 82, 84, 85, 86 and 87. The notification exempts "parts... required for the purpose of initial setting up, or for assembly or manufacture, of any article falling under the Heading Nos........ 84.10(1), 84.11(1).... of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India and proved to the satisfaction of the Assistant Collector of Customs to be so required for such setting up, assembly or manufacture, from so much of that portion of the duty of customs leviable thereon under the said First Schedule, as is in excess of the rate applicable to the said article when imported complete subject to the following conditions, namely :-

"(1) The authorities mentioned below are satisfied and certified in each case that the parts in question are or will be required for the purpose specified above and recommend grant of the above exemption;

(i) ....

(ii) The Director of Industries or the Commissioner of Industries of the State concerned, in the case of firms which are classified as falling under the Small Scale Sector."

... ...

(2) the importer shall, by the execution of a bond in such form and for such sum as may be prescribed by the Assistant Collector of Customs, bind himself, to pay, on demand, in respect of such parts as are not proved to the satisfaction of the Assistant Collector of Customs to have been used for the aforesaid purpose an amount equal to the difference between the duty leviable on such parts but for the exemption contained herein and that already paid at the time of importation."

There was a similarly worded exemption which was in operation prior to this exemption Notification. This was Notification No. 350 dated 2.8.1976 as amended from time to time. The petitioners import parts which are used in the manufacture of mechanical seals specially designed for centrifugal pumps and compressors. Such mechanical seals fall under tariff entries 84.10(1) and 84.11(1). The parts therefore, which are imported by the petitioners and used for the manufacture of such mechanical seals are covered under this exemption notification. They were similarly covered under the prior exemption notification also. The petitioners have relied upon a certificate issued by the Commissioner of Industries, State of Gujarat where the petitioners'' manufacturing unit is situated, setting out the list of paras which are utilised for the manufacture of such mechanical seals manufactured by them. The Commissioner of Industries has also recommended grant of exemption to the petitioners as specified in the exemption notification. The petitioners are, therefore, liable to pay Customs duty on these parts at the rates specified under entries 84.10(1) and 84.11(1) of the Customs Tariff Act.

10. It is contended by Mr. Advani learned counsel for the respondents that the parts which are imported by the petitioners are general parts which do not qualify for exemption under these notifications. This submission does not appear to be correct. Under the exemption notifications the parts should be such as are required (inter alia) for the manufacture of an article falling under the heading (inter alia) 84.10(1) or 84.11(1). That is why the importer is required to execute a bond in respect of such parts as are not proved to have been used for this purpose. In other words, the exemption Notification does not require that the parts should be exclusively usable for articles falling under the prescribed headings alone. They should, in fact, be used by the manufacturer only for the purpose of manufacture of articles falling under the headings specified. It is therefore not necessary for me to examine whether the parts which are imported by the petitioners are capable of being used in the manufacture of any other article or not. It is sufficient that they are actually used only for the manufacture of articles falling under item 84.10(1) or 84.11(1). It is of course the contention of the petitioners that these parts can only be used for the manufacture of mechanical seals for centrifugal pumps and compressors. The petitioners have made a specific averment to this effect in paragraph 12 of the petition. The

respondents have not specifically denied this averment and have merely been content with a general denial which does not carry conviction.

11. In fact in the departmental proceedings in respect of some of the parts so imported by the petitioners, the orders which are annexed to the petition show that the petitioners were denied the benefit of the exemption notification because the respondents were of the view that mechanical seals do not fall under tariff item 84.10(1) or 84.11(1). The department was of the view that these seals fall under tariff item 84.65. Since this heading is not specified in the exemption notification the petitioners were denied the benefit of the exemption notification.

12. For the first time in their affidavits the respondents have taken up a contention that the parts imported by the petitioners as well as the mechanical seals manufactured by them are general purpose items. The respondents have not produced any material in support of their bare averments to this effect. In fact the respondents were unable to specify any other article in which such mechanical seals or parts for their manufacture could be utilised. The petitioners manufacture mechanical seals of a special variety which can be used only for the manufacture of centrifugal pumps or compressors. They are made to specifications. The contention of the respondents that these are general purpose mechanical seals must therefore be rejected in the absence of any material support of this contention.

13. The petitioner further contend that even dehors the exemption notification, parts imported by them are classifiable under items 84.10(1) and 84.11(1) because these parts are exclusively parts used for centrifugal pumps and compressors. The respondents have, for the first time in their affidavit denied this position by alleging that these parts are of general use. It is not necessary to examine this issue in view of my finding above.

14. The only issue that now remains is of laches. This petition has been filed on 7th April 1982. The petitioners claim refund of customs duty paid under a mistake of law as from June 1975. The petitioners have, however, now confined their claim only as from 2nd August 1976. From the correspondence which is annexed to the petition it seems that from the year 1977 onwards the petitioners were making their representations to various authorities pointing out that the customs duty levied on the parts imported by them was very heavy and the rate of customs duty should be reduced as a special case.

15. According to the petitioners they discovered on or about 16th July, 1980 that the duty paid by them under various tariff items on the various parts imported by them was wrongly paid and it ought to have been paid only under Tariff Items 84.10(1) and 84.11(1). This date is chosen because on that date the petitioner filed their first refund claim. The petitioners have not given any particulars of how this mistake of law was discovered. It is therefore, not possible to say whether such a mistake could have been discovered earlier or not. No particulars

are given as to how or why the first refund claim was filed on 16th July 1980. In the absence of any particulars, there is no material on the basis of which I can say that the mistake was discovered only on 16th July 1980 or that it could not reasonably have been discovered earlier. In these circumstances, it is just and fair that the petitioners should get a refund of excess customs duty paid for a period of 3 years prior to the date of the filing of the petition, that is to say, as from 7th April 1979 and upto 1st March 1986 as duty paid under a mistake of law. The respondents are bound to refund the excess duty collected during this period without the authority of law.

16. For the period after 1st March 1986, the petitioners shall pay duty in accordance with law in force and in the light of this judgment.

17. Under an interim order dated 27th July 1982 in this petition the respondents have assessed the parts imported as described in Exhibits BZ and CA provisionally under items 84.10(1) and 84.11(1) respectively on the petitioners furnishing bonds as per the interim order. These assessments should now be finalised, and the bonds should be discharged.

18. The rule is made absolute accordingly. Respondents to refund the excess amount of duty paid within a period of 8 weeks of the petitioners'' furnishing to the respondents a statement giving particulars of the refunds claimed.

19. The respondents to pay to the petitioners costs of the petition.