(1985) 02 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2217 of 1984

Shah Enterprises APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Customs Act, 1962 — Section 25(1)

Citation : (1990) 27 ECR 52 : (1990) 50 ELT 229

Hon'ble Judges : P.B. Sawant, J

Bench : Single Bench

Judgement

1. The conflicting interpretation of Entry No. 6 in the Notification No. 342/76-Cus., dated the 2nd August 1976 as amended upto 13th February 1982 is the subject matter of the present petition and a group of similar other petitions which are being heard together. For the sake of convenience the main judgment is being delivered in this petition. The result in the other petitions will follow the present judgment. The Petitioners in all these cases have imported into India from the countries mentioned in the said Notification the goods which answer the illustrative nomenclature "Polymerisation and Co-Polymerisation products" which are some of the articles falling under the Heading Number 39.01/06 of the First Schedule to the Customs Tariff Act 1975. Admittedly, however, the imported goods do not answer the description of the articles mentioned specifically at items (i), (ii) and (iii) of the said Entry No. 6. The Customs authorities therefore denied them the exemption from the customs duty available under the said Notification, and hence, the present petition.

2. The contention of the Petitioners is that the exemption granted by the said Notification is available to the goods imported by them since they answer the general illustrative nomenclature of Polymerisation, although they may not answer the description of the three specific items mentioned in the said entry since the exemption is available to all the goods answering the broad nomenclature of Polymerisation and Co-Polymerisation products. As against this,

it is the contention of the Respondents that the exemption is granted only to the specific three items named separately in the said entry and not to all the goods answering the general nomenclature.

3. In order to appreciate the rival contentions it is necessary to reproduce the relevant portion of the Notification as well as the Entry No. 6 in its entirely :-

"G.S.R. 711(E) - In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table annexed hereto and falling under the Heading Number in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), specified in the corresponding entry in column (3) of the said Table, when imported into India from Brazil or Spain or Turkey or Yugoslavia or the Republic of Korea or Tunisia or the Arab Republic of Egypt or Chile or Mexico or Uruguay or Peru or Paraguay or Bangladesh or Romania, from so much of that portion of the standard rate of duty of Customs specified in the said First Schedule with respect to the aforesaid goods.

It is clear from the Notification that the exemption is available only to certain goods which are specified in the table provided they are imported from the countries mentioned in the Notification. The Notification in terms states that the goods exempted are those which are specified in column (2) of the table and falling under the Heading Number specified in the corresponding entry in column (3) thereof. Both the description and the Heading Number of the goods mentioned in the Notification are those as are given in the First Schedule of the Customs Tariff Act 1975. It is also of some interest to note that the nomenclature of the goods given in the said Act is as per the internationally recognized Brussels Trade Nomenclature (BTN) and the Heading Number also more or less correspond to those of the BTN.

4. On plain reading of the Notification and its Table, it appears to me clear that the goods which are exempted are essentially those which are specified in column (2) of the Table. That the notification also describes the said goods further by adding another expression viz; "and falling under the Heading Number in the First Schedule to the Customs Tariff Act 1975 (51 of 1975) specified in the corresponding entry in column (3) of the said table is only in the nature of a further description of the said goods and is for the purpose of their fuller identification. However, primarily it is the description of the goods given in column (2) which is to be looked to, to find out the specific goods exempted under the Notification. The next important thing which has to be borne in mind is that the Table in the Notification reproduces the nomenclature verbatim from the First Schedule of the said Act since the Notification is issued under the said Act. Where therefore the table reproduces such nomenclature without qualifying it in any manner, it will have to be presumed that all the goods which answer the said nomenclature are exempted by the Notification. However, where the table does not merely reproduce the nomenclature but purports to qualify it either by taking

out some goods only from the illustrations of goods given in the nomenclature, it is only right to hold that the exemption does not extend to all the goods answering the nomenclature but is confined only to those which are specifically carved out from the general nomenclature. Otherwise the enumeration of the specific goods separately although they are included in the illustrative nomenclature generally, would be redundant. It is a primary rule of interpretation of statutes, which also applies to Notifications and the Tables annexed to them that no words are to be construed as superfluous or redundant so long as they make a meaning. Wherever therefore the goods are mentioned separately and specifically in the Table, then not withstanding they form part of the general nomenclature those goods alone be held to attract the exemption.

5. Entry No. 6 of the Notification which falls for consideration in this petition may now be scrutinized against this background. The said entry shows that the broad nomenclature of Polymerisation and Co-Polymerisation products reproduced there in the beginning is borrowed verbatim from and forms a part of the Heading No. 39.01/06 of the First Schedule to the said Act. Heading No. 39.01/06 of the First Schedule refers not only to Polymerisation and Co-Polymerisation products but also to other products such as condensation, polycondensation and poly addition products, regenerated cellulose, vulcanised fibre, hardened proteins, natural resins, artificial resins, chemical derivatives of natural rubber, and other high polymers, etc. All these products are described in the said Heading Number by their illustrative nomenclatures as are the Polymerisation and Co-Polymerisation products. A glance at the other Heading Numbers in the Schedule also shows that most of the products carry illustrative nomenclatures and the Table annexed to the present Notification has reproduced verbatim some of the said nomenclatures. It is further not all the products which are mentioned in the said Heading Number 39.01/06 which have been given exemption under the present Notification or included in Entry 6 of its Table. It is only some of the products answering the description of Polymerisation and Co-Polymerisation products which have been exempted under the Notification. Since the products which are singled out for such exemption answer the general description of Polymerisation and Co-Polymerisation products, the whole of their general illustrative nomenclature has been reproduced first from the said Heading Number 39.01/06 in Entry 6 in order to identify them and they are specifically and separately mentioned thereafter. All the Polymerisation and Co-Polymerisation products together with other products bear the same Heading Number 39.01/06 in the Schedule. It is for this reason that in order to identify the exempted goods the Notification also adds by way of parenthesis the further description namely, as "and falling under Heading Number in the First schedule to the Customs Tariff Act 1975." Much importance should therefore not be given to the fact as to whether the Heading Number and the rate of exemption granted are mentioned against the general nomenclature of the goods exempted or against the exempted goods themselves. The Notification makes it clear that it is the goods which are specified in column (2) of the Table and falling under the

Heading Number in the First Schedule to the Act which are granted the exemption stated in column (4) of the Table. The rest of the contents of the Table have to be construed accordingly.

6. In the present case the Notification issued in English does mention even the Heading Number as well as the rate of exemption against the three specific products viz. Polyvinyl chloride, polyvinyl acetate and Polystyrene and not against the general nomenclature "Polymerisation and Co-Polymerisation products". However in the Hindi version of the said Notification, the Table shows the Heading Number and the rate of exemption against the specific items (ii) and (iii) namely, Polyvinyl acetate and Polystyrene but not against the specific item (i) i.e. polyvinyl chloride. That obviously appears to be a mistake in printing. For, it makes no sense that while the Heading Number and the rate of exemption should be mentioned against the specific items (ii) and (iii), it should remain to be mentioned against the specific item (i) and instead should be mentioned against the general nomenclature. If the intention was to grant exemption to all the Polymerisation and Co-Polymerisation products it was not necessary to mention the Heading Number and the rate of exemption against the specific items (i), (ii) and (iii) in English version of the Notification and against items (ii) and (iii) in its Hindi version. Of course it was then not necessary to mention all the three items specifically and separately at all after mentioning the general nomenclature as pointed out earlier. I am therefore more than satisfied that the goods exempted are only the three products specifically mentioned at 6(i), 6(ii) and 6(iii) after the illustrative nomenclature of Polymerisation and Co-Polymerisation products viz; Polyvinyl chloride, Polyvinyl acetate and Polystyrene respectively.

7. It was sought to be contended on behalf of the Petitioners that a glance at the other similar Notification No. 341 of 1976 shows that wherever the Government wanted to single out specific items out of the illustrative nomenclature of the entry, the expression used is either "namely the following" or "in the forms mentioned below" or "namely" as is evident from Entries 68, 109 and 131 respectively of the said Notification. It is true that such expression have been used in the entries in question. However the use or absence of such expression alone is not determinative of the intention to exempt or not to exempt specific goods. For example the other entries in the very same Notification do not contain any such expressions and yet specific products are extracted from the general nomenclature of the entries and mentioned separately. All that can be said in this behalf is that whoever drafts the Notifications does not follow a uniform practice and adopt a similar pattern of language. There is also much looseness in language used in the Notifications. This is illustrated by Entry 95 of the said Notification No. 341. The entry mentions seven specific goods belonging to the Polymerisation family serially in items (1) to (7) and thereafter item (8) states "others". The enumeration of item (8) as "others" would show that all the goods belonging to the Polymerisation family are covered by the said entry. Hence there was no need to enumerate any of the items specifically. Yet for reasons

which only the draftsman knows the entry has been incorporated in the said manner in the said Notification. So is the case with Entries 94, 96 and 125 of the said Notification. Hence no help can be had from the other entries either in the same Notification or in other Notifications to gather the meaning of the specific entry which falls for our consideration in the present case.

8. Hence the only conclusion that is possible is that the exemption granted as per Entry No. 6 of Notification No. 342 of 1976 is confined only to Polyvinyl chloride, Polyvinyl acetate and Polystyrene which are the products mentioned specifically at 6(i), (ii) and (iii) respectively.

9. There is also another question involved in this petition viz. that of the exemption of the imported goods from the auxiliary and additional duties. It would have been necessary to go into the question if I were to hold that the exemption notification was applicable to the goods imported. Since however I have held that the exemption notification is not applicable to the goods imported by the Petitioners the said further question does not survive for answer.

10. The result therefore is that the goods imported by the Petitioners being not covered by the Notification in question are not entitled to the exemption available under it. The Petition is therefore dismissed and the Rule is discharged with costs in one set.

11. Before I part with this matter it is necessary to mention that as has been pointed out hereinabove, there is too much looseness in drafting the Notifications and particularly in describing the goods in the Tables annexed to them. This lack of care in drafting the Notifications results in too much inconvenience, and waste of time, energy and resources for all concerned and leads to unnecessary litigation making an avoidable demand on the precious time of the already overburdened Courts. It does not appear that there is a sufficient awareness on the part of the concerned persons that documents such as these require care and precision in drafting them. The fate of daily commercial transactions involving huge amounts and considerable consequence to the public revenue and the public depends upon the language of such Notifications. Yet it appears that no more than routine and casual attention is paid to their drafting. This certainly is a very unhappy situation and requires immediate attention of the highest authorities in charge of the department concerned. I direct that a copy of this judgment be sent to the Hon''ble Minister of Commerce and Trade for necessary action.

The operation of this order is stayed for two weeks from today.