(1982) 12 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 7325 of 1982

Sree Ayyanar Spinning and Weaving Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-12-1982

Acts Referred:
Customs Act, 1962 — Section 12, 25

Citation : (1983) 3 ECR 199 : (1983) 14 ELT 2342

Hon'ble Judges : Ratnam, J;Balasubrahmanyan, J

Bench : Division Bench

Advocate : R. Chokken, Managing Director and C. Natarajan, for the Appellant; Ministry of Finance and K.B. Balasubramaniam, for the Respondent

Judgement

Balasubrahmanyan, J.—The issue which is raised in this writ petition is about the extent of the coverage of the exemption from Customs duty

on imported viscose staple fibre under a Central Government notification of 198.

2. The answer depends on our being able to distinguish between different varieties of Customs duties and the nature of each. It also depends on

our understanding of the precise terms of the notification under which exemption from duty has been granted to viscose staple fibres.

3. In this country we now have various duties of customs, called basic duty, additional duty, auxiliary duty and surcharge. The first two alone are in

point for the present discussion. The Customs Act, 1962 deals with Customs duty proper, which people refer to as the basic duty. The Customs

Act is a permanent Code for the Customs. It establishes the administrative hierarchy for the management of duties of customs; it lays down the

assessment procedure; it contains enforcement provisions, such as, penalties and prosecutions, and confiscation of contraband; it also provides for exemptions, etc., and, perhaps most important of all, the Act also lays down or declares the charge of Customs duty. S. 12 of the Act is the

charging section. Somewhat in the manner of the Income Tax Act, which relegates the actual rates of income tax to the annual Finance Acts, S. 12

of the Customs Act too relegates the enumeration of dutiable goods and the prescription of rates of duty to a different enactment called the

Customs Tariff Act, 1975. This Tariff Act, as its name indicates, and as its statutory function undoubtedly is, carries a tariff, that is to say, a list or

rather, two lists. One is the First Schedule, which lists out the dutiable import items and the corresponding rate of import duty against each item.

The other is the Second Schedule, which gives a list of dutiable export items and the corresponding rate of export duty on each item. But it is a

mistake to suppose that the Customs Tariff Act only carries the tariff and nothing else. It goes farther and levies, in proprio vigore, or on its own

force, as it were, an additional duty, which is over and above, and distinct and separate from, the basic Customs duty leviable under S. 12 of the

Customs Act. This additional duty statutorily so-called, is also known in the trade as the countervailing import duty. The implication of this

additional levy is clear from the charging section, Section 3 of this Act. While the section declares the levy of this ''additional duty'' on import items,

to know which imports are dutiable and by how much, we are asked to refer to the Central Excise Manual. For this section adopts, as the rates of

additional duty, the very rates of Central excise leviable on like goods locally manufactured. The intention obviously is to afford a degree or

protection to the local manufacturer by loading the imported variety with an additional import duty. With the charge to additional duty laid down in

this fashion, the Customs Tariff Act proceeds to adopt the whole gamut of the provisions in the Customs Act for effectuating that charge. See

Section 3(6) of the Customs tariff Act.

4. For those who read the Customs Act, therefore, the Customs Tariff Act is compulsive reading. Otherwise, we would not know that goods are

dutiable, and how much duty such goods would have to pay. For those who read the Customs Tariff Act, the Central Excise Manual is compulsive

reading, for otherwise, we would not know what imported goods are subjected to the countervailing duty and to what extent and at what rates.

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What is more, for those who wish to know when and where and how to pay the countervailing import duty under the Customs Tariff Act, the

Customs Act is compulsive reading, for it alone provides the complete Code for collection, recovery and the rest.

5. This inter-marriage of statutes relating to a plurality of duties of customs should not block our perception of their distinct and separate identities.

To repeat, the basic customs duty is levied under the Customs Act on such goods and at such rates as are set out in the first and second Schedules

to the Customs Tariff Act. The additional Customs duty is levied, independently, under the Tariff Act, at the rates and on the types of goods

mentioned in the Central Excise Acts. It will not do to mix up the two kinds of duties.

6. We can now turn to exemptions from duties. u/s 25 of the Customs Act, 1962, the Central Government is given the power of exemption, by

notification. The exercise of this power to exempt may be selective as to goods, selective as to duties, and selective as to the quantum of

exemption. A similar power of exemption exists in the Central Government as respects countervailing import duties as well. See section 3(6) of the

Tariff Act read with Section 25 of the Customs Act. This separate power is necessary because additional duty is a different duty from the basic

duty.

7. Having regard to the statutory power of exemption, its scope and the manner of its exercise, it is in every case, a matter of construction of the

concerned notification issued by the Central Government as to what the coverage of the exemption is; whether it is confined to the basic duty

alone, or the countervailing duty alone, or both.

8. The text of the Central Government''s notification in this case is as under :-

215/80-Cus., dated 1-11-11980. - 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, exempts viscose staple fibre and viscose tow, falling within

Chapter 56 of the First Schedule to the Customs Tariff Act, 1957 (51 of 1957) when imported into India, from so much of the duty of Customs

leviable thereon under the said First Schedule as is in excess of 10 per cent ad valorem"".

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The Notification says that it is being issued in exercise of the powers of the Central Government u/s 25 of the Customs Act, 1962. The notification

does not say that it is issued also in exercise of the Central Government''s additional powers of exemption u/s 3(6) of the Customs Tariff Act.

1975. This is one indication that the notification does not cover the countervailing duty on imported viscose staple fibre. The text of the notification

makes the position clearer still. Mark the use by the Government of the expression ''so much of the duty of customs leviable, under the first

schedule to the ""Customs Tariff Act, 1962"". Can we say, consistent with our understanding of the separate personalities of the basic Customs duty,

on the one hand, and the additional duty, on the other that the latter kind of Customs duty also is a duty ''leviable under the First Schedule'' to the

Tariff Act ? The answer is ''no''. The additional or countervailing duty is leviable only u/s 5(1) of the Customs Tariff Act, and not under Schedule I

of that Act. The answer is as simple as all that, once the differentiation between the two kinds of customs duties properly sinks in our minds.

9. Mr. K. N. Balasubramaniam, learned counsel for the Customs department, said that in drawing up the notification for exemption it has always

been the practice of the Central Government to take care to particularise what precisely is the kind of duty with reference to which exemption is

being granted. The department''s counter affidavit carries some illustrative examples showing this practice. We are not surprised that this precaution

is taken in the wording of the notification what with the variety of customs duties in the field. It is true that the notification in this case does not say

or indicate that ''basic duty'' alone is the subject of exemption. Nor does it expressly exclude the additional duty from the purview of the

exemption. But the pertinent reference in the notification to the ''First Schedule to the Tariff Act'' only means and implies a coverage of exemption

restricted to the basic ad valorem duty and does not include the countervailing duty. This is a case we must apply the principle '' expressio unius est

exclusio alterius''.

10. The basic customs duty leviable on viscose staple fibre under Chapter 56 of the First Schedule to the Tariff Act is 140% ad valorem. In view

of the Central Government notification, the writ petitioner would be entitled to exemption of 130% out of 140% and be taxed only on 10% ad

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valorem. As we earlier demonstrated, the extent of exemption is clear enough from the pointed words used in the notification. The Customs

department does not deny the exigibility of 130% exemption ad valorem in basic duty. The stand they take, which we have accepted is that the

notification does not touch the countervailing duty at all, leviable at Rs. 4 per kilogram. This duty, not being the subject of exemption, has got to be

paid by the writ petitioner at the import stage. We see no other go for the writ petitioner.

11. Learned counsel for the Customs in the course of his argument raised a preliminary objection. He said that the writ petitioner could not in this

case properly invoke this court''s jurisdiction under Art. 226 of the Constitution merely because the spinning mills of the writ petitioner is situate in

Ramnad in Tamil Nadu. Learned counsel, however, did not dispute that the Central Government, against whom also the writ petitioner has prayed

for the issuance of the appropriate writ, pervades the length and breadth of the Indian Union, including Tamil Nadu. But learned counsel''s stand is

that the cause of action for this writ petition had arisen wholly outside the State. He pointed out in this connection that Cochin, in Kerala State, is

the port of entry for the writ petitioner''s consignments of viscose staple fibre and it is also the place where the assessing officers of the Customs

department have the seat of their officers.

12. Having gone into the merits of the case, which were fully argued by both sides before us, we do not think we can serve any body''s useful

purpose by entering into a discussion of this objection as to jurisdiction.

13. In the result, the rule already made by this court is vacated and the writ petition is dismissed with costs. Counsel''s fee Rs. 1000.

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