(1996) 07 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 3157 of 1987

Stretch Fibres (India) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Customs Act, 1962 — Section 27(1), 27(3), 27(4)

Citation : (1997) 68 ECR 405 : (1997) 89 ELT 25

Hon'ble Judges : P.S. Patankar, J;M.B. Shah, J

Bench : Division Bench

Advocate : Mr. H.R. Shetty, for the Appellant; Mr. M.I. Sethna, Mr. V.G. Rege, Mr. H.V. Mehta and Mr. R. Ashokan, for the Respondent

Judgement

P.S. Patankar, J.—The petitioners imported polyamide chips/polyester chips for manufacture of nylon yarn. The imports took place during 1973, 1974 and 1975. The petitioners paid additional/countervailing duty on the goods imported by them.

2. It is their case that the Madras High Court in the case of Saigal Industries Vs. Central Board of Excise and Customs and Another, and this Court in the case of Century Enka Limited and others Vs. Union of India and Two others, considered the Central Excise Notification No. 38/73, dated 1st March, 1973. It was held that polyamide chips used for manufacture of nylon yarn are wholly exempt from the payment of additional/countervailing duty in view of the said Notification. Therefore, according to the petitioners, they were not liable to pay the additional/ countervailing duty and entitled to get the benefit of the said Notification No. 38/73. Therefore, they filed 45 refund applications in respect of the 45 consignments which the petitioners have imported. They claimed refund amounting to Rs. 33,32,744.50. The applications for refund came to be rejected by the Assistant Collector of Customs by passing the order dated 15th February, 1981 holding that they were filed after a period of six months and hence, barred by limitation u/s 27(1) of the Customs Act, 1962. The petitioners filed an appeal

before the Appellate Collector, which was rejected on 3-4-1982. Therefore, the petitioners filed appeal before the CEGAT and the CEGAT by its order dated 26th November, 1985 remanded the matter for considering the contention of the petitioners that whether the duty was paid under protest and thereafter, to decide the claims of the petitioners for refund of the said additional/ countervailing duty. After remand, the matter was heard by the Asstt. Collector of Customs who passed the impugned order dated 20th February, 1987 holding that the petitioners have failed to produce any document in support of its case that the petitioners have paid the duty under protest and hence, the claims came to be rejected. The said order is challenged by filing this petition on 24th September, 1987.

3. The learned Counsel for the respondents pointed out that the refund claims made by the petitioners prima facie appeared to be barred by limitation in view of Section 27(1) of the Customs Act, 1962. He further pointed out that this is a case of mere erroneous interpretation of Notification. The contention deserves acceptance.

4. While disposing of Writ Petition No. 1656 of 1987, Pfizer Ltd. v. Union of India & Anr., this Court has, by its judgment and order dated 6th/7th March, 1996, rejected a similar contention raised by the petitioners therein.

5. Further, an identical question was considered by the Supreme Court in the case of Union of India and Another Vs. Kirloskar Pneumatic Company Limited, . 26 . After considering the provisions of Section 27(3) and (4) of the Customs Act, 1962, the Supreme Court held that it is not permissible for the High Court to direct the authorities under the said Act to act contrary to the aforesaid statutory provisions. The power conferred under Article 226/227 of the Constitution of India is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law.

6. In view of the aforesaid decisions, as the refund applications were clearly time-barred and taking into consideration the fact that the duty was paid by the petitioners without any protest and without disputing their liability to pay the amount, this petition is required to be dismissed.

7. In the result, the petition is dismissed. The Rule is discharged.

