

(1992) 04 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 27 of 1990 and several others

Subhash Photographics

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Customs Act, 1962 — Section 12, 157, 25(1)

Citation : (1992) 3 BomCR 49 : (1992) 41 ECR 791 : (1992) 62 ELT 270

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Shri N.R. Kantawala, S.V. Shetty, D.H. Mehta, V.N. Deshpande, M.H. Shah, D.J. Dalal, G.D. Mehta, N.M. Shah, Mrs. Rupa Agrawal and Mr. M.D. Mehta, for the Appellant; Shri J.P. Deodhar, L.S. Vyas, M. Sanklecha and Ashoken, instructed by K.C. Sidhwa, for the Respondent

Judgement

Dr. B. P. Saraf, J.—The question for determination in this batch of writ petitions is whether the photographic machineries imported by the petitioners fall under Tariff Heading No. 98.01 and are entitled to the benefit of concessional rate of duty applicable to goods falling under the said heading.

2. The facts, relevant for the purpose of determination of the controversy in these cases being identical, the facts of one of the cases stated to be of representative type viz., Writ Petition No. 27 of 1990 are being stated. The petitioner in this case is a partnership firm which carries on the business of developing and processing of colour photo films. For the purpose of its business, it imported from Singapore certain photographic machineries. These photographic machineries, when imported, were subject to levy of duty under the Customs Act, 1962 read with Customs Tariff Act, 1975. There is no dispute in this regard. The controversy is only in regard to the tariff heading under which these goods would fall and the rate of duty.

3. Prior to 28th February, 1986, the relevant heading of the Tariff Act, 1975 was Heading No. 84.66, which provided for levy of duty at a concessional rate of 40%

on import of machineries required for initial setting up of a unit or substantial expansion thereof, popularly referred to as "Project Import". The availability of the benefit of lower rate of duty under this heading was, however, subject to fulfilment of certain conditions. One of the conditions was that the goods in question should be imported against one or more specific contracts, which had been registered with the appropriate Customs House in the manner prescribed by the Regulations, which the Central Board of Excise and Customs might make u/s 157 of the Customs Act. The aforesaid Heading No. 84.66 read as under :

"84.66 (i) All items of :

- (a) Machinery including prime-movers,
- (b) Instruments, apparatus and appliances,
- (c) Control gear and transmission equipment,
- (d) Auxiliary equipment, as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified :

- (1) industrial plant,
- (2) irrigation project,
- (3) power project,
- (4) mining project,
- (5) project for the exploration for all or other minerals, and
- (6) such other projects as the Central Government may, having regard to the economic development of the country, notify in the official gazette in this behalf :

Provided these are imported (whether in one or in more than one consignment) against one or more specific contracts, which have been registered with the appropriate Customs House in the manner prescribed by the Regulations which the Central Board of Excise and Customs may make u/s 157 of the Customs Act, 1962 (52 of 1962) and such contract or contracts has or have been so registered before any order is made by the proper officer of Customs permitting the clearance of home consumption, or deposit in a warehouse of items, components or raw materials;

(ii) All spare parts, other raw materials including semi-finished materials, or consumable stores imported, as a part of a contract or contracts, registered in terms of sub-heading (i) provided the total value of such spares does not exceed 10% of the value of the goods covered by sub-heading (i) and further, provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in sub-heading (i)."

4. The relevant regulations on the subject were "Project Imports (Registration of Contracts) Regulations, 1965" (hereinafter referred to as "1965 Regulations"). According to the petitioners, these Regulations, which had been framed u/s 157 of the Customs Act (as amended from time to time), continued to regulate the import of goods falling under Heading No. 84.66 also. Many colour labs imported by persons like the petitioners after introduction of Heading No. 84.66 were held by the Collector of Customs as "industrial plant", and the contracts for import thereof were registered thereunder to enable the importers to avail of the benefit of concessional rate of duty under the Heading No. 84.66 and the further concession granted vide Notification No. 132/85 issued by the Central Government u/s 25(1) of the Customs Act in respect of goods falling under the said heading. This position continued till 28th February, 1986. On and from this date the First Schedule (the Import Schedule) to the Customs Tariff Act, 1975 was repealed by the Customs Tariff (Amendment) Act, 1985 (Act 8 of 1986) and substituted by a new Schedule.

5. The relevant heading in the new tariff schedule, corresponding to the old Heading No. 84.66 is Heading No. 98.01. It is in Chapter 98, which refers to Project Import etc. Heading No. 98.01 reads :

6. It may be pertinent to mention here that there are six notes to Chapter 98. Two Notes which are relevant for the purpose of the controversy before us are Notes 1 and 2 which read as follows :

1. This chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere in this Schedule.

2. Heading No. 98.01 is to be taken to apply to all goods which are imported in accordance with the regulations made u/s 157 of the Customs Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations."

7. As contemplated by Heading No. 98.01 read with Notes 1 and 2, new regulations were framed by the Board u/s 157 of the Customs Act. It was done in supersession of earlier Project Imports (Registration of Contracts) Regulations, 1965. These Regulations were called "Project Import Regulations, 1986" (hereinafter "1986 Regulation") and brought into force on 3-4-1986. These Regulations are applicable for assessment and clearance of goods under Heading No. 98.01.

8. Regulation 3 of the 1986 Regulations contains definition of certain expressions. Clause (a) thereof defines "industrial plant". This definitions, being very crucial for the present case, is extracted below :

"3. Definitions. - For the purpose of these regulations :

(a) "Industrial Plant" means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for

manufacture, production or extraction of a commodity, but does not include -

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages, and workshops; or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule;

9. The petitioners wanted to import industrial system for the purpose of their photographic studios and/or photographic film processing laboratories and applied for registration of the relevant contracts under the 1986 Regulations to avail of the benefit of assessment of duty at the concessional rate under Heading No. 98.01. The contracts were not registered by the Customs Authorities, as according to them, the goods sought to be imported by the petitioners did not fall under Heading No. 98.01 in view of the definition of "industrial plant" given in "1986 Regulations", which specifically provided that the expression "industrial plant" would not include such goods. Aggrieved by non-registration of the contracts under the aforesaid Regulations thereby disentitling them from the benefit of assessment of goods imported by them at the concessional rates of duty under Heading No. 98.01, the petitioners approached this Court under Article 226 of the Constitution.

10. The main contention of the petitioners is that the expression "industrial plant" under Heading No. 98.01 should be given its normal meaning. The restricted meaning given to it in the definition in clause (a) of Regulation 3 of the 1986 Regulations is contrary to the normal meaning of the expression "industrial plant" and the same should be held to be ultra vires Heading No. 98.01. "Industrial Plant" in that heading should be construed to include the photographic machineries imported by the petitioners. It is further submitted that the decision of "industrial plant" as given in clause (a) of Regulation 3 of the 1986 Regulations excluding machineries, equipments etc., imported by the petitioners from the said expression, is beyond the scope and ambit of the Regulation making powers of the Board u/s 157 of the Customs Act. It amounts to encroachment upon the powers of legislature. In substance, the contention is that the Board, in exercise of its regulation-making power u/s 157 of the Customs Act, cannot define any item in such a manner which goes counter to the plain meaning of the words and expressions used in the enactment.

11. We have heard the counsel for the parties at length and carefully considered the various submissions. There is no dispute that the items imported by the petitioners also fall under Heading No. 90.10 where the rate of duty leviable is 100%. Heading No. 90.10 reads as under :-

12. Counsel submits that Chapter 98 applies to all goods covered by it even though they may be covered by a specific heading therein including Heading No. 90.10. We do not find any difficulty in accepting this contention. From a bare reading of Note 1 of Chapter 98 it is evident that this chapter has an over-riding

effect over other chapters and headings. The applicability of this chapter and headings contained therein is, however, subject to the restriction that the goods satisfy the conditions prescribed therein. The condition relevant for the purpose of the goods covered by heading No. 98.01 is that contained in Note 2, viz., the goods should be imported in accordance with the regulations made u/s 157 of the Customs Act. It is also clear from the latter part of the same note that expressions used in Heading No. 98.01 would have the meaning assigned to them in the Regulations.

13. The real controversy, therefore, revolves round the interpretations of goods falling under Heading No. 98.01 read with the Note 2 and the 1986 Regulations. Before proceeding to decide the same, it may be expedient to observe some of the special features of the Customs Tariff Act, 1975, which will have a material bearing on the interpretation of tariff items contained therein including those under Heading No. 98.01. In the first schedule, the principles which should govern the classification of the goods therein have been laid down. Principle 1 which is most relevant for our purpose reads as follows :-

"1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes, do not otherwise require, according to the following provisions....."

14. We have already referred to the two Notes of the Chapter 98. Note 2 thereof clearly provides that Heading No. 98.01 is to be taken to apply to all goods which are imported in accordance with Regulations made u/s 157 of the Customs Act, 1962 and expression used in that heading shall have the meaning assigned to them in the said Regulations. The aforesaid Note leaves no scope for doubt that though the legislation broadly referred to certain expressions describing the goods falling under Heading No. 98.01, it was left to the regulation-making authority u/s 157 of the Customs Act to define such expressions. It has further been made clear that this heading would apply only to such goods which are imported in accordance with such regulations. In such a situation, Heading No. 98.01 has to be read with the regulations framed u/s 157 of the Customs Act. As earlier observed, in the 1986 Regulations "industrial plant" has been defined not to include the goods of the description imported by the petitioners. The only question that has to be decided in such a situation is can the Board do so ? The contention of the petitioners is that it cannot. The submission is that the Board has transgressed the limits of its regulation-making power u/s 157 of the Customs Act by trying to abridge the ordinary meaning of the expression "industrial plant" used by the legislature in Heading No. 98.01 by incorporating a definition with exclusion clause.

15. Before proceeding to deal with this aspect of the matter in details in the light of the specific contentions of the petitioners and the ground pressed in support thereof, it may be expedient to mention that the undisputed position in the

instant case is that if the definition of "industrial plant" given in the 1986 Regulations is held to be valid, the goods imported by the petitioners would not fall within the description of the goods given under Heading No. 98.01 and their import will not be governed by the 1986 Regulations read with Note 2 of Chapter 98 and the claim for the same to be assessed at the concessional rate provided thereunder shall not be sustainable.

16. Various submissions of the counsel for the petitioners may be summed up as under :-

(1) The words "industrial plant" used in Heading No. 98.01 should be given their ordinary meaning. Chapter Notes are not to be read as necessarily altering the definitions or description as ordinarily understood. The Chapter Note is not intended to fundamentally alter, expand or constrict that concept unless there is clear language in the section or chapter notes to that effect. Chapter Note 2 does not define "industrial plant" and the same being defined under 1986 Regulations, such definition cannot be made applicable to heading No. 98.01.

(2) If it is held that the Board has power to frame Regulations, the definition of "industrial plant" being contrary to the term as defined under the analogous statutes passed by the Parliament, 1986 Regulations, is ultra vires and the powers conferred on the Board u/s 157 of the Customs Act and Chapter Note 2 of Chapter 98 of the Customs Tariff Act.

(3) 1986 Regulations do not have any legislative sanction. These are not even subordinate legislation in the true sense of the term. They have been made only for regulating the procedure for registration of contracts under the Tariff Heading No. 98.01. It is beyond the powers of the Board to define the term "industrial plant" to define goods specified by the legislature itself so as to exclude certain goods, which in the ordinary course would have fallen within it.

(4) The definition of "industrial plant" contained in clause (a) of Regulation 3 of the 1986 Regulations is intended to circumvent the legislative provision and deny the petitioners the benefit of assessment in respect of import of photographic machineries (project import) at concessional rates and the same is, therefore, ultra vires and liable to be struck down.

17. We have carefully considered all these submission. Before we deal with them, it may be expedient to refer to some of the provisions of the Customs Act, Customs Tariff Act, 1975 and 1986 Regulations. Section 12 of the Customs Act is the charging section. It provides -

"Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from India."

The Customs Tariff Act, 1975 specifies the rates at which the duties of customs shall be levied under the Customs Act, 1962. The rates are specified in the

Schedules to the said Act. A perusal of the scheme of these two enactments makes it absolutely clear that though they are two separate enactments, one cannot be given effect to without the other. Section 12 of the Customs Act levies the charge and indicates the taxable event. The rates, however, are not specified therein or elsewhere in the Act. It has been left to be specified by the Customs Tariff Act, 1975. It therefore, says in Section 12 that -

".... duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force....."

The Customs Tariff Act, 1975 specifies the rates of duty. This enactment is only for the purpose of specifying the rates at which the duty of customs would be levied under the Customs Act. Section 12 of the Customs Act is thus complete only when it is read with the Customs Tariff Act, 1975. Both the enactments are made by the Parliament. The rates of duty could have been specified by the Parliament in the Customs Act itself. That was not done. On the other hand, the Parliament in its wisdom decided to do so by means of two enactments. These two enactments, therefore, form a composite legislation or an integrated code. It is only for convenience and simplicity that instead of providing tariff in the Customs Act itself, a separate enactment has been made for that purpose. In this view of the matter, the powers conferred on the Board u/s 157 of the Customs Act to make regulations to carry out "the purposes of the Act" have to be interpreted as "for the purposes of both the Customs Act and the Customs Tariff Act." The Board, therefore, has the power to make regulations in respect of matters which are specified in sub-sections (1) and (2) of Section 157 of the Customs Act for the purposes of Customs Tariff Act also. This section, however, is not the sole repository of such power. Power to make regulations may be conferred, in express or implied terms, by any other provision of either of the two Acts and in that event it shall have the power to frame regulations in respect of such other matters also. Chapter 98 of the Customs Tariff Act read with Note 2 thereof clearly contemplates making of regulations by the Board u/s 157 of the Customs Act for the purpose of import of goods falling under Heading No. 98.01. It also expressly provides that the expressions used in that heading shall have a meaning assigned to them in such regulations. Thus the legislation itself contemplates framing of regulations to govern the import of goods falling under Heading No. 98.01 and in express terms empowers the Board, while making such regulations, to define the expressions used in Heading No. 98.01. This conferment of power to frame regulations on the Board by the legislature is not the subject matter of challenge in these writ petitions. The validity of Note 2 of Chapter 98 is not questioned before us on the ground of excessive delegation. Under the circumstances, it is difficult to hold that the Board had no power to frame regulations and to define the expression "industrial plant" used in Heading No. 98.01. Action of the Board is therefore clearly within the scope and ambit of its regulation-making powers. The definition given by it to the expression "industrial plant" is applicable for the purpose of interpreting the said expression used in Heading No. 98.01.

18. We now turn to the next contention of the learned counsel for the petitioners that the expression "industrial plant" should be construed as understood in common parlance. It should be given its popular meaning. If it is so interpreted, according to the learned counsel, the goods imported by the petitioners would fall within the expression "industrial plant". The submission is that the legislation itself having used the expression in Heading No. 98.01 without any exclusion clause, the meaning thereof cannot be narrowed down by the subordinate authority, viz., the Board. In other words, the Board by defining an expression of day to day use with an exclusion clause cannot amend the item or entry or heading as incorporated in the statute by the legislature. The contention in effect is that the Heading No. 98.01 being a part of the enactment, it should prevail over the definition given by the Board in exercise of its regulation-making power.

19. The submission of the learned counsel on the face of it seems to have some force. Undoubtedly, the normal rule is that the rule or regulation-making authority, in exercise of its delegated powers, cannot give meaning to an expression used by the Legislature different from the one which it will bear in the common parlance. But that is not so in the instant case in view of the legislative scheme itself. The legislature in Heading No. 98.01, has used certain expressions but has given power to the Board, while making the regulation u/s 157 of the Customs Act to regulate the import of such goods falling under that heading, to assign meaning to the expressions used therein and has made it abundantly clear that "expression used in this heading shall have the meaning assigned to them in the said regulation". The legislature has thus specifically conferred the power of defining the expressions used by it in the Tariff Heading No. 98.01 on the Board and also made it clear that such meaning shall be the meaning attributable to the particular expression for the purposes of the Act. In such a case, it cannot be said that the common parlance meaning shall prevail over the meaning assigned by the Board. The Board has assigned a meaning to the expression "industrial plant" by defining the same in clause (a) of Regulation 3. In view of specific provision contained in Note 2 this expression in Heading No. 98.01 shall have the same meaning as contained in the aforesaid definition. If that be so, the goods imported by the petitioners which have been specifically excluded from the description of the goods under the Heading 98.01, would not fall under that heading and would not be entitled to assessment at the rates and in the manner applicable to the goods falling under that heading. The application of the petitioners for registration of the contract under 1986 Regulations was, therefore, rightly rejected.

20. The next point that arises for consideration relates to the value of the Chapter Notes for the purposes of interpretation of tariff headings. In this connection it may be pertinent to observe that the Chapter Notes in the Customs Tariff Act are part of the Act itself. They are intended to provide mechanism for resolving controversy regarding classification of goods. The Customs Tariff Act, 1975 itself lays down elaborate rules of interpretation of First Schedule and classification of goods therein. These rules, in the form of

principles, are laid down in the beginning of the First Schedule itself as well as in each Chapter. Every heading therefore, has to be interpreted in the light of the relevant principles of interpretation, section notes and chapter notes. All the relevant rules of the interpretation in the import tariff are to be applied for classification of goods. The classification, therefore, has to be determined according to the terms of the headings read with the relevant chapter notes and rules of interpretation. If the chapter note empowers the Board to define an expression used in the heading and declares that such expression shall have the meaning assigned to it by the Board, any definition given by the Board in exercise of legislative mandate contained in Chapter Note shall be within its regulation-making powers, and shall be the definition of the expression for the purpose of the Customs Tariff Act itself. It shall, in effect, get incorporated in the Act itself.

21. Very strong reliance was placed by the petitioners on the entry as it stood prior to 28-2-1986 and the provisions of 1965 Regulations. Prior to 28-2-1986, the expression "industrial plant" was used in Heading No. 84.66 and the goods imported by the petitioners were held to fall within the meaning of expression "industrial plant" used in that heading. Their contract were registered and the benefit of concessional rate of duty was made available to them. But in the Chapter containing that item neither there was a Note like Note 2 nor the 1965 Regulations contained any definition like the one contained in clause (a) of Regulation 3 of the 1986 Regulations excluding the goods imported by the petitioners from the definition of "industrial plant". In the absence of such a definition, "industrial plant" had to be given ordinary meaning and in that view of the matter the goods imported by the petitioners were held to be "industrial plant". But since 28-2-1986, the position has changed completely. Chapter 98 is different because of Note 2 thereof, which has conferred express power on the Board to define the expression used under Heading No. 98.01 and has also made it clear that the meaning assigned by the Board shall be the meaning for the purpose of the said heading. The Board has defined the expression and that definition is applicable for the purpose of Customs Tariff Act. Under the said definition the goods imported by the petitioners are excluded from the expression "industrial plant". The position, as it stood prior to 1986, therefore, does not in any way help us in interpreting Heading No. 98.01. In view of foregoing discussion, it is clear that there is no infirmity in the 1986 Regulations or in the definition of "industrial plant" contained therein. The Board has not in any way acted in excess of its regulation-making power and that being so the 1986 Regulations as well as the definition of "industrial plant" contained therein has to be held to be valid.

22. In the course of arguments, it was also contended that the power conferred on the Board vide Note 2 of Chapter 98 amounts to excessive delegation. We find that Chapter 98 or Note 2 thereof are not the subject matter of challenge before us. The only challenge is to the regulations made by the Board and the definition of "industrial plant" contained therein on the ground of being in excess of the

powers conferred on the Board by Section 157 of the Customs Act or Note 2 of Chapter 98. This submission as held earlier, has no merit. The question of excessive delegation not being the subject matter of challenge before us, we need not go into the same.

23. In view of the foregoing discussion we are of the opinion that the plants or industrial system or mini lab systems imported by the petitioners do not fall under the Tariff Heading No. 98.01 of the first schedule to the Customs Tariff Act. All these writ petitions, therefore, fail and are dismissed. In view of the facts and circumstances of the case, we make no order as to costs.