(1991) 07 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 661 of 1982

Texind Corpn. Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2
Customs Tariff Act, 1975 — Section 3

Citation : (1991) 56 ELT 59

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri J.Y. Singhania, for the Appellant; Shri D.H. Mehta, H.V. Mehta, V.G. Rege and K.C. Sidhwa, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1 is a Company incorporated under the Companies Act and carries on business of import and export of goods, the Company imported copper scrap of Birch and Berry Grades and submitted bills of entry for home consumption on March 27, 1982. The Customs authorities sought to levy and collect additional duty of customs equal to excise duty leviable on copper scrap under Item No. 26A (1b) of the Central Excise Tariff at the rate of Rs. 3,300/-per Metric Ton and 80% ad valorem basic duty. The petitioners claimed that the scrap consists of broken, damaged or discarded remnants sold as junk. The petitioners claimed that there is no transformation or bringing into existence of any different or distinctive article as a result of treatment, labour or manipulation, and as such there is no manufacture within the meaning of Section 2(f) of the Central Excise Act. The petitioners claimed that levy of additional duty is ultra of the charging Section 3 of the Customs Tariff Act. The reliefs sought are :

(a) that the petitioners are entitled to clearance of the imported articles without paying the additional duty or surcharge; and

(b) direction to the respondents not to levy any additional duty or surcharge under the Tariff Act.

2. Shri Singhania, learned Counsel appearing on behalf of the petitioners, very fairly stated that the challenge to the levy of additional duty of customs u/s 3(1) of the Custom Tariff Act cannot survive in view of the decision of the Supreme Court reported in Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, . Before the Supreme Court the challenge was to the levy and collection of additional duty of customs in respect of import of brass scrap. The Supreme Court turned down the challenge. In view of this decision of the Supreme Court, the petitioners are not entitled to any relief.

3. Accordingly, petition fails and rule is discharged with costs.

The respondents are at liberty to enforce the bank guarantees and the personal bonds furnished by the petitioners at the time of passing of the interim order for clearance of imported goods.