

(1993) 06 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No"s. 15313 to 15317 of 1990

Titan Watches Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 25
Customs Tariff Act, 1975 — Section 3

Citation : (1994) 46 ECC 117 : (1994) 69 ELT 22

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : Shri S. Govind Swaminathan, for the Appellant; Shri K. Ilias Ali, Additional Govt. Standing Counsel, for the Respondent

Judgement

1. Broadly speaking, in all these matters, a common question of law arises for consideration. In fact, common arguments were advanced by learned Counsel on both sides, and hence these matters are disposed of by this common order.

2. The common question that arises for consideration in these cases, again broadly putting it, is about the scope and extent of the Exemption Notification bearing No. 45/85-Customs, dated 28-2-1985, issued by the Central Government, u/s 25(1) of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act"). The said Exemption Notification (which will hereinafter be referred as "the Notification") prescribes concessional duty for horological machines and testing equipment (the goods) when imported into India, for the purpose of manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof. Of course, the Notification imposes as many as five conditions for availing the concession.

3. The prayer in W. P. Nos. 15315 to 15317 of 1990 is set out below :-

"... to issue a writ of certiorarified mandamus calling for the records of the third respondent culminating in his Order No. 559/342/90 Gr. 5A dated 3-9-1990 and

quash the said impugned Order No. 559/342/90, dated 3-9-1990 of the Third Respondent and direct the respondents to extend to the Petitioner's goods imported under the Bill of Entry No. 029525 dated 19-7-1990 the benefit of Notification 45/85 Cus., dated 28-2-1985...."

The prayer in W.P. No. 15316/90 :

"... to issue a writ of Certiorarified Mandamus calling for the records of the Third Respondent culminating in his Order No. S/1/129/90-BACE S. 20, dated 27-7-1990 and quash the said impugned Order No. S/1/129/90-BACE S. 20, dated 27-7-1990 of the Third Respondent and direct the Respondents to extend to the petitioner's goods imported under the Bills of Entry No. 017889, dated 5-7-1990, 018554, dated 12-7-1990 and 019425, dated 18-7-1990 the benefit of Notification 45/85-Cus., dated 28-2-1985"

The prayer in W.P. No. 15317/90 :

".... to issue a writ of Certiorarified Mandamus calling for the records of the third respondent culminating in his Order No. 59/1236/90 ... dated 6-6-1990 and quash the said impugned Order No. 59/1236/90, dated 6-6-1990 of the third respondent and direct the respondents to extend to the petitioner's goods imported under the Bill of Entry 18057/02-05-90, the benefit of Notification 45/85-Cus., dated 28-2-1985"

4. Let me now set out briefly the facts relating to these cases, which are not in dispute.

5. The petitioner-Company (same in all these cases) carries on the business of manufacture of Quartz Analog watches and parts thereof. The petitioner is one of the leading manufacturers of watches in this country and produced (as per the figure given in the affidavit) 13.55 lakh watches during 1988-89 with a sales value of Rs. 7,461-73 lakhs. The petitioner claims to be a significant export earner for the country, having exported watches and movements worth Rs. 532.54 lakhs in foreign exchange during 1989-90.

6. It is stated, prior to the issue of the Concession Notification, the machines and equipments were subjected to Customs duty at substantially high rates. The Government of India, for a variety of reasons, including, to check the large scale smuggling of watches into the country and also to encourage the growth and development of the indigenous watch manufacturing industry, promulgated the Notification under consideration. The petitioner in W.P. No. 15313 of 1990 has, in fact, in paragraph 6 of the affidavit, has set out in detail the circumstances under which the Notification under consideration as well as Notification Nos. 43 and 46 of 1985 (relating to watch industry) came to be promulgated. No doubt, the Notification under consideration prescribes conditions numbering about five for availing the benefit of the same. It is not in dispute, and it is also common ground, that the petitioner has obtained necessary Certificates for importation of the goods in question from the Directorate General of Technical Development

(hereinafter called DGTD) as required as one of the conditions prescribed by the Notification. Factually, the Customs Authorities permitted the importation of the goods in question and assessed the same at concessional rate applying Notification 45 of 1985, on the basis of the Certificate issued by the DGTD, till 1989. Suddenly, in the year 1989, on the basis of a decision arrived at in the Tariff Conference of the Collectors of Customs, the Authorities started to take a different view in spite of the Certificates issued by the DGTD. According to the petitioners, the conclusion reached at the Collectors' Conference on the scope of Notification 45/85 was to the effect that inasmuch as no definition was to be found to the term "horological machine" in the tariff of the Notification, the benefit of the Notification should be given only to machines which are specially designed for the watch industry and such benefit should not be extended to machines which can be used for other purposes as well. On that view, the Customs Authorities declined to extend the concessional rate of duty to the machines imported by the petitioner during the years 1989 and 1990. The machines imported during the years 1989 and 1990 were : "watch case turning machine, copy milling machines, electro plating equipment, vacuum hardening furnace, annealing furnaces, drilling machines, gear cutter grinder, transfer printing machine, jewellery tool, electric screw driver and soldering station". As already pointed out, for importation of these machines, necessary Certificates have been issued by the DGTD. According to the petitioner, the petitioner is entitled to the concessional rate of duty under Notification 45/85 as it has complied with the conditions prescribed by the said Notification. Inasmuch as the Authorities are refusing to extend the concession, the petitioner has come to this Court, seeking the various reliefs as set out above.

7. In the common counter affidavit for W.P. Nos. 15313 to 15315 and 15317 of 1990, the respondents, while substantially admitting the facts narrated in the affidavits filed in support of the writ petitions, have, however, taken a stand that the Exemption Notification 45/85 is comprised of two parts, namely, the first part refers to the type of goods which qualifies for the exemption, while the other part contains certain conditions to be complied with by persons who wish to avail the benefit of the Notification. They have taken a further stand, namely, that the expression "horological machine" has to be considered to refer only to such machines which are directly employed in the assembly or production of watches/watch components. It is further stated in the counter affidavit that on a verification of the catalogue, the Authorities found that the impugned goods (machines) are bound to have contained other applications and are not meant exclusively for manufacture of watches/watch components. In other words, according to the respondents, the machines imported do not satisfy the first part of Exemption Notification and hence the petitioner is not entitled to the benefit of Notification 45/85. The definite stand taken by the respondents regarding the Certificates issued by the DGTD reads as follows :-

"I submit that the various grounds raised in the 24th para are not tenable. As stated and referred above, it is not disputed that Customs Notification No. 45/85

allows exemption in respect of those goods which are fully covered by essentiality certificate issued by the competent authority. But the acceptance of the certificate depends on the importers satisfying the requirement that the machines imported fall under the category horological machines/testing machines. The contention of the petitioners that the Customs authorities have only limited scope is not correct. The Customs authorities are the ultimate authorities in taking a decision to extend the benefit of the notification, taking into account the facts and circumstances of the case. They have to verify all the relevant documents at the time of the assessment and ensure that all the conditions laid down therein are complied with in toto by the importers who wish to avail the benefit of the notification. The DGTD Certificate is only in the nature of recommendation for concessional assessment. The applicability of the Customs notification for the goods imported, vests with the Customs authorities only."

Further, the respondents have taken a stand that the Exemption Notifications are required to be construed strictly according to the words and expressions used therein and also along with their associated conditions. The respondents have stated that the petitioners have failed to satisfy the Department that the imported goods fall under the category of "horological machine". The respondents, in fine, have justified the rejection of concessional rate of duty, and consequently the orders passed by them levying normal rate of duty.

8. Mr. S. Govind Swaminathan, learned Senior Counsel appearing for the petitioner, placing heavy reliance on a judgment of the Bombay High Court in *Bombay Chemicals Pvt. Ltd. Vs. Appellate Collector of Customs*, submitted that the Authorities are bound to give due weight to the Certificates issued by the DGTD and they have no right to sit in appeal over the judgment of the DGTD. In other words, learned Senior Counsel submitted that accepting the Certificates, the Authorities should have assessed the machines imported at concessional rate of duty, applying Notification 45/85.

9. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel, appearing for the Revenue, however, submitted, reiterating the stand taken by the respondents in the counter affidavit, that the Certificates issued by the DGTD are not final and the respondents alone have a final say in the matter, and that they are entitled to take a different view, if warranted, from that of the view expressed in the Certificates issued by the DGTD.

10. I have considered the rival submissions.

11. The Notification in question reads as follows :-

"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 horological machines and testing equipments (hereinafter referred to as the goods), when imported into India for the purpose of manufacture or assembly of mechanical wrist

watches or parts thereof and quartz analog wrist watches or parts thereof, from -

(a) so much of that portion of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as is in excess of the amount calculated at the rate of 10 per cent ad valorem; and

(b) the whole of the additional duty leviable thereon u/s 3 of the said Customs Tariff Act;

subject to the following conditions, namely :-

(i) the exemption contained in this notification shall be applicable only to those goods which are covered by lists certified by the Industrial Adviser or the Additional Industrial Adviser in the Directorate General of Technical Development or the Industrial Adviser in the Office of the Development Commissioner (Small Scale Industries) of the Ministry of Industry to be required for the manufacture or assembly of the said wrist watches or parts thereof;

(ii) the importer shall produce evidence to the Assistant Collector of Customs to the effect that the goods have been imported by such importer under a programme duly approved by the Industrial Adviser or the Additional Industrial Adviser in the Directorate of Technical Development or the Industrial Adviser in the Office of the Development Commissioner (Small Scale Industries) of the Ministry of Industry, for the manufacture or assembly of the said wrist watches or parts thereof;

(iii) the importer shall produce a certificate from a duly authorised officer of the Directorate General of Technical Development to the effect that the goods in respect of which the exemption is claimed are such as are not manufactured in India;

(iv) the importer shall, within such period as the Assistant Collector of Customs may specify in this behalf, produce a certificate from the Assistant Collector of Central Excise in whose jurisdiction the factory manufacturing or assembling such wrist watches or parts thereof is situated, to the effect that the said goods have been installed in the importer's own factory for the manufacture or assembly of the said wrist watches or parts thereof; and

(v) the importer shall execute a bond in such form and for such sum as may be specified by the Assistant Collector of Customs, binding himself to pay on demand, in respect of the goods as are not proved to the satisfaction of the Assistant Collector of Customs to have been installed for the aforesaid purpose, an amount equal to the difference between the duty leviable on the goods but for the exemption contained herein and that already paid at the time of importation.

Explanation :- In this notification, the expression "wrist watches" means watches which are designed primarily to show the time of the day, with or without additional features."

It is not contended before me on behalf of the Revenue that the petitioner has

failed to comply with any one of the conditions prescribed by the Notification under consideration. The contention of the learned counsel for the Revenue is that the petitioner has not satisfied the first part of the Exemption Notification, namely, the main part. The relevant portion of the main part reads as follows :-

".... hereby exempts horological machines and testing equipments (hereinafter referred to as the goods), when imported into India for the purpose of manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof,....."

On a fair reading of the above main part, there is nothing to suggest that the machines and equipments to be imported should be of the type exclusively meant for the purpose of manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof. The mere fact that the machine and equipment imported for the manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof can also be utilised for other purposes, will not by itself enable the Authorities to deny the concession contemplated under Notification 45/85. This can be supported by referring to Condition No. 4 and also Condition No. 5 set out supra. The main part read along with the conditions will support the stand taken by the learned Senior Counsel for the petitioner. In this connection, the decision of the Bombay High Court cited by the learned Senior Counsel for the petitioner reported in *Bombay Chemicals Pvt. Ltd. Vs. Appellate Collector of Customs*, can be usefully referred to. On the scope of a similar Notification issued u/s 25(1) of the Customs Act, a learned single Judge of the Bombay High Court has expressed his view in the following words :-

"Now, in the present case, it is not disputed on behalf of the Respondents by Mr. C. J. Shah that the Petitioners have complied with the conditions mentioned in paragraph 2 of the Notification dated 1st March 1968, read with the public Notice dated 25th September 1968, being Exh. C, to the affidavit in rejoinder, dated 29th June, 1973. That is to say that it is not disputed on behalf of the Respondents that the petitioners have duly complied with all the conditions necessary for the grant of the exemption under the Notification dated 1st March 1968, being Exh. A to the petition. What is urged on behalf of the Respondents is that on a proper interpretation of Exh. A to the petition, the exemption is only granted where such chemicals are used for what is termed in the affidavit in reply dated 10th July, 1970 as "chemical intermediates" for manufacture of insecticides, pesticides and fungicides, and that the certificates issued by the Director General of Technical Development, Government of India, are not conclusive. This argument on behalf of the Respondents is only to be sought to be rejected for the simple reason that the exemption Notification dated 1st March 1968, being Exh. A to the petition, itself mentions the conditions upon which exemption is to be granted. Those conditions are mandatory and it cannot therefore be argued that when the mandatory conditions are complied with they are not to be conclusive in so far as the granting of exemption is concerned or

that the Customs Authorities have a right to sit in judgment over the certificates which are obligatory to be furnished to the Customs authorities for the purpose of obtaining the exemption. In my view, the Customs authorities have no jurisdiction whatsoever to sit in appeal over the certificates which have been granted by the Director General of Technical Development or the Director of Industries, as the case may be and come to their own conclusion. These Certificates are binding and conclusive upon the Customs authorities save and except, when it can be contended that these certificates have been obtained by fraud or under some mistake. In the present case, it is not the case of the Respondents that the certificates which have been obtained by the petitioners and copies of which are annexed to the Petition and to the affidavit in rejoinder, have been obtained by fraud or under a mistake. In my view, therefore, once these certificates have been produced and the conditions mentioned in paragraph 2 of the Notification dated 1st March 1968, have been complied with, read along with the Public Notice dated 25th September, 1968, then it was obligatory upon the Customs authorities to grant the exemption under Exh. A to the petition. In the Orders which have been annexed in the petition both the Assistant Collector of Customs as well as of the Appellate authorities no reasons have been given as to why they did not act upon the certificates so produced. In fact, there is only an averment in the affidavit in reply that these certificates are not conclusive. I have directed Respondent No. 1 to make an affidavit stating his reasons for passing the Orders Exh. 1, to the Petition and dated 20th October 1969. In response thereto an affidavit dated 19th April 1975, has been filed by Respondent No. 1 in which he has stated that the exemption Notification cannot be liberally interpreted and should restricted to its literal meaning. I am unable to appreciate this approach of the 1st Respondent. There is no question of the 1st Respondent interpreting the Notification, Exh. A to the Petition, dated 1st March 1968. Once the conditions mentioned in paragraph 2 of the said Notification are complied with, it was obligatory upon him to grant the exemption thereunder. He was not entitled to sit in judgment over the certificates produced by the petitioners and although an opportunity was given to him to state by an affidavit to be filed as to what the Respondents had to say in connection with the certificates furnished, he has not chosen to do so and has without any material on record refused the exemption to the petitioners. In my opinion, it was erroneous on the part of Respondent Nos. 1 to 3, not to grant the exemption to the petitioners, once the conditions mentioned in paragraph 2 of the Notification, Exh. A, dated 1st March 1968, were complied with, I am not, in the present case, concerned with the question as to whether in fact, the Notification applies only to the use of chemicals for agricultural purposes as sought out to be made on behalf of the Respondents. It is quite clear on a plain interpretation of Exh. A, that the exemption is bound to be granted once the conditions mentioned therein are complied with and which in fact is not disputed in this case."

The above view of the learned Judge clearly supports the contention of the learned Senior Counsel for the petitioner. I am unable to agree with the

contention of the learned counsel for the Revenue that the machines and equipments, to come under the Exemption Notification, must be of the type that they should have been manufactured exclusively for the purpose of manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof. If such a view is taken, we will be adding some more conditions to the Notification. Even assuming that there is some doubt, it is well-settled that the benefit of such doubt in matters of taxation will go to the assessee. Viewed from that angle also, the contention of the learned Senior Counsel for the petitioner has to be accepted. As all the impugned Orders in W.P. Nos. 15315 to 15317 of 1990, denying concessional rate were on the basis that the machines and equipments imported were not exclusively meant for the manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof, which view is not accepted by me, for the reasons stated above, they have to be quashed and they are accordingly quashed. Consequently, Writ Petition Nos. 15315 to 15317 of 1990 are allowed.

12. The reliefs prayed for in W.P. Nos. 15313 and 15314 of 1990 read as follows :-

".... to issue a Writ of Declaration or any other appropriate Writ, Order or Direction under Article 226 of the Constitution declaring that the benefit of Notification 45/85-Cus., dated 28-2-1985 cannot be denied to goods covered by lists certified by the Industrial Adviser/the Additional Industrial Adviser in the Directorate General of Technical Development as qualifying for import under Notification No. 45/85-Cus., dated 28-2-1985 and render justice."

Prayer in W.P. 15314/90 :

".... to issue a writ of Mandamus directing the Respondents, their officers, agents and men, to give the benefit of Notification 45/85- Cus., dated 28-2-1985 to goods covered by lists certified by Industrial Adviser/Additional Industrial Adviser in the Directorate General of Technical Development as qualifying for import under Notification 45/85-Cus., dated 28-2-1985 and render justice."

The above reliefs are couched in too wide terms and, therefore, the reliefs as prayed for cannot be granted. However, the following relief would meet the ends of justice :-

In view of the above discussion made while disposing of Writ Petition Nos. 15315 to 15317 of 1990, and the conclusions reached thereon, the respondents are directed not to overrule or ignore the Certificates issued by the DGTD for the importation of horological machines and testing equipments for the manufacture or assembly of mechanical wrist watches or parts thereof and quartz analog wrist watches or parts thereof. It is further directed that in addition to the Certificates as required, if the petitioner complies with the conditions, the respondents cannot deny the benefit of Notification 45/85. These two writ petitions, namely, W.P. Nos. 15313 and 15314 of 1990 are disposed of accordingly. There will be no order as to costs in all the writ petitions.