(1989) 07 BOM CK 0001

In the Bombay High Court

Case No : Write Petition No. 2722 of 1982

Tubeweld Engineering Works Pvt. Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (1990) 26 ECR 84

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—The Petitioners imported stainless steel tubes from Japan. The vessel carrying them crossed into territorial waters on 27th February 1982. On 5th March 1982 the Petitioners filed a bill of entry for removal of the said tubes to a bonded warehouse and they were so removed.

2. It was the contention of the Petitioners that the said tubes were not dutiable when they crossed into territorial waters because there was no entry in the Schedule to the Customs Tariff Act that was applicable to them They therefore filed this Writ Petition seeking to clear the said tubes from the bonded warehouse without payment of Customs duty. By an interim order dated 8th December 1982 they were permitted to clear the said tubes from the bonded warehouse upon the furnishing of a bank guarantee.

3. The Full Bench judgment of this Court in Apar Pvt. Ltd. v. Union of India 1985 23 ELT 644 : 1988 (19) ECR 514 holds that if goods are not dutiable when they cross the Customs frontier, DO Customs duty may be levied upon them when they are cleared for house consumption. If, however, they are dutiable when they cross the Customs frontier, the rate of Customs duty that is chargeable when they are cleared for home consumption is that rate of duty which is applicable to them on that day. The principal question in this Writ Petition, therefore, is

whether the said tubes were not dutiable on 27th February 1982 when the vessel carrying them crossed into territorial waters.

The relevant entry in the 1st Schedule to the Customs Tariff Act, as it then stood, read thus:

It was amended with effect from 15th March 1982 to read thus:

4. It was submitted by Mr. Thakore, learned Counsel for the Petitioners, that steel tubes must be distinguished from stainless steel tubes and be relied upon certificates in that behalf which are annexed to the petition. He submitted that he was supported in this regard by the entry as amended wherein stainless steel tubes had been specifically mentioned. This showed that stainless steel tubes were not within the purview of the unamended entry.

5. It seems to me, upon a plain construction of Item 73.17/19 as it then read and as it read after the amendment, that the contention must be negatived. Tubes of steel include tubes of stainless steel. The amendment that was effected makes under the description of ''Tubes and pipes and blanks therefore of iron and steel'' a distinction between those of material other than stainless steel and those of stainless steel and the latter are made dutiable at a much higher rate than that applicable to the former. ''Tubes and pipes and blanks therefore of iron and steel'' was the description also in the unamended entry and, plainly, covered steel tubes. The contention of the Petitioners that the said tubes were not dutiable when they crossed into territorial waters must, therefore, be negatived.

6. Mr. Thakore submitted that the Petitioners had had no opportunity of convincing the adjudicating authority that in the trade stainless steel tubes were not understood to be covered by the term ''iron and steel tubes'' and that, therefore, the matter should be remanded to the adjudicating authority. The Petitioners came to court without giving the adjudicating authority an opportunity to adjudicate. In any event, having regard to what I have stated above, there is no reason for a remand.

7. It was submitted by Mr. Thakore that the provisions of Section 15(b) of the Customs Act, 1962, in so far as they made payment of duty on a sub sequent date unrelated to the date on which the imported goods crossed territorial waters, constituted an unreasonable restriction which was not in the public interest and was violative of Article 14 and Article 19(1)(g) of the Constitution of India. I was told that there are matters pending before the Supreme Court in which this contention has been raised but no effort whatever has been made to substantiate it before me. I, therefore, record the submission and leave it at that.

8. The petition is dismissed.

9. The Petitioners shall, having regard to the interim order be liable to pay to the Respondents interest at the rate of 12% per annum on the amount of the Customs duty. No order as to costs.

10. It transpires that the Petitioners have not kept the bank guarantee given by them pursuant to the interim order alive. Mr. Thakore undertakes to Court on their behalf that the principal amount of the Customs duty shall be deposited in Court to the credit of the Petition within one week from today. The Petitioners'' advocate shall inform the Respondents'' advocate when the deposit is made. The Respondents shall be at liberty to withdraw the amount deposited after six weeks from today and shall be entitled to take appropriate proceedings to recover the interest amount.