(1985) 06 MAD CK 0004

In the Madras High Court

Case No : Writ Appeal No. 451 of 1985

Union of India and Another APPELLANT

Vs

Raj's Continental Exports Private Limited RESPONDENT

Date of Decision : 28-06-1985

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1991) 31 ECC 369 : (1987) 27 ELT 256

Hon'ble Judges : M.A. Sathar Sayeed, J;David Annoussamy, J

Bench : Division Bench

Advocate : P. Narasimhan, for the Appellant; S. Balasubramaniam, for the Respondent

Judgement

M.A. Sathar Sayeed, J.—The above writ appeal filed by the Union of India, is directed against the order of Venkataswami, J. in writ

petition No. 1429 of 1985. It appears from the facts of the case and as argued by the counsel appearing for the appellants that the respondent, a

small scale unit, is a manufacturer and exporter of readymade garments in Bangalore. For the purpose of its business, the respondent used to

import from time to time consignments of staples from Japan. Such imported staples are used for stapling the readymade garments while packing

the materials. In February, 1985, the respondent imported certain consignments of the staples pins from Japan by the vessel s.s. OCEAN

WEALTH. The relevant documents for clearing the said consignments under I.M. No. 144/85 were presented to the Assistant Collector of

Customs. The respondent classified the goods under Heading 73.31 of the Customs Tariff Act, 1975. But the Assessing Authorities expressed the

view that on an earlier occasion the Appellate Collector of Customs has given a ruling that the staples of these types are classifiable only under

Item No. 83.01/15(2) of the Customs tariff Act and hence demanded duty under the said item. The respondent objected to the classification and

contended that the stand taken by the department is incorrect and against the principles under the Customs Tariff Act. The respondent has also

brought to the notice of the Customs Authorities that several writ petitions were filed questioning the correctness of the order on this point and the

High Court also granted interim reliefs permitting those parties to import and clear the goods of identical type after assessing the same under Item

73.31 of the Act subject to the condition of furnishing bank guarantee to the extent of one half of the differential amount. In so far as the

respondent is concerned, it was contended that he be allowed to clear the goods for the present after assessing under item 73.31 of the Act and

after furnishing bank guarantee of 50 per cent of the difference in duty till a direction is obtained from this Court. In spite of it, the Customs

Authorities assessed the goods under Order No. 859/9/85 Group III, dated 20.2.1985, which has led the respondent to file the writ of certiorari

filed mandamus seeking to quash the order of the second appellant. It was inter alia contended in the writ petition that the proper entry under which

the goods imported by the respondent have to be taxes is only under Item 73.31 and not 83.01/15(2) of the Act. The Customs Authorities appear

to have proceeded on an erroneous basis that, what was imported is stationery goods. The goods imported by the respondent were not at all used

as stationery in the industry and, as stated already, the staples imported were used only for stapling the readymade garments in packing. The

respondent further contended that the impugned order of the Customs Authorities is vitiated for the reason that it does not specify under which

particulars of sub-items of chapter 83, the goods can be classified. Item 83.01/15(2) general, consists of three sub-items and each sub-item

consists of various parts. This chapter does not contemplate the materials of the type which is iron and steel staples, imported by the respondent

for use in packing of textiles and other similar trades and therefore it cannot be classified as stationery goods. Though the respondent has to prefer

an appeal against the order of the Assistant Collector of Customs, he sought the relief under Article 226 of the Constitution, for the Collector of

Customs has already taken the view that such articles are to be classified only under item 83.01/15(2). Under the circumstances, the respondent

rushed to this Court seeking a writ of certioriarified mandamus calling for the records of the second appellant culminating in his order No. 859/9/85

Group III., dated 20.2.1985 and to quash the same. He has also sought the release of the goods covered by L.G.M. No. 144/85 and Line Nos.

136 to 140 and 142 to 146 on payment of duty under the Heading 73.31 of I schedule to the Customs Tariff Act, 1975.

2. The writ petition was resisted by the appellants contending that the proper Heading under which the goods imported by the respondent to be

taxed, is item 83.01/15(2) and not 73.31 of the Customs Tariff Act. This contention of the appellants was based on the ground that the respondent

has imported consignments of ''MAX'' staple pins 10-IM valued at Rs. 4,98,849.17. The assessment of the Assistant Collector of Customs

imposing the duty under Heading 83.01/15(2) of the Act, according to the appellants, is correct. It was further contended that against the order of

the Assistant Collector of Customs, the remedy of the respondent is to prefer an appeal u/s 128 of the Act before the Collector of Customs and

since no appeal has been filed, the respondents cannot invoked the jurisdiction under Article 226 of the Constitution of India and hence the writ

petition filed by the respondent on this ground alone has to be dismissed. It was further averred in the counter filed by the second appellant, that

the staples imported by the respondent cannot be assessed under Item 73.31. Even in Brussels Nomenclature the ""staples"" used in office type

stapling machine or pliers are excluded from Heading 73.31 and are classifiable only under heading 83 as stationery goods. It is under the

circumstances it was contended that the proper duty that has to be levied is under Heading 83.01/52(2) and not under 73.31 of the Customs Tariff

Act, that the respondent is not entitled to any relief as prayed for and that the writ petition be dismissed.

3. Venkataswami, J. who heard the matter came to the conclusion that the staples imported by the respondent will fall under Heading 73.31 of the

Customs Tariff Act and that the duty will have to be levied only on that basis. After a detailed discussion, the learned Judge allowed the writ

petition. It is against the order of the learned Judge the above writ appeal is filed by the appellants.

4. We have heard the argument of Mr. Narasimhan, Senior Central Government Standing Counsel for the appellants and we have also gone

through the records of the case. The question that requires for consideration is, whether the levy of duty by the appellants under Heading

83.01/15(2) of the Customs Tariff Act, 1975, is justifiable or the levy has to be made under Item 73.31. The entire case of the department rests on

the ground that the staples imported by the respondent, being stationery goods, will fall under the Heading 83.01/15(2) of the Customs Tariff Act,

1975. On the other held, the argument of the respondent was that the staples imported are used only for his business purpose for stapling the

readymade garments in packing. The impugned order of the Assistant Collector of Customs is as follows :

I order the assessment of staple pins in question under Heading 83.01/15(2) of Customs Tariff Act, with countervailing duty under item 68

CENT.

Except the finding of the Assistant Collector of Customs that the staple pins are of thinner variety used as stationery, no independent discussion is

found to support the finding. It is further to be seen that the Asstt. Collector of Customs has conceded that the imported staples are used for

packing the garments. In fact, the use of the staples for packing the garments is not denied in the counter of the appellants. Even in the counter

affidavit filed by the appellants it has been averred in paragraph 6 that ""the present staples which are thinner in variety, ''MAX'' product, are one of

the stationery goods, though the stapling is being done in the business circle mostly for packing garments like products in covers or papers, apart

from using the same as stationery mostly"". It was contended that the staples imported by the respondent are of thinner variety and are classified by

the department on the basis of general and substantial use of the product. Entry 31 under Chapter 73 on which reliance is placed by the respective

counsel is as follows :-

Chapter 73

Iron and Steel and Articles thereof

TABLE

Heading Sub-heading No. & Standard Central Excise

No. description of article rate of duty Tariff Item

----

1 2 3 4

73.31 Nails, tacks, staples, 100% 3

hooknails, corrugated

nails, spiked cramps, studs,

spikes, and drawing pins,

of iron and steel, whether

or not with heads of other

materials but not including

such articles with heads of

copper

The heading under Chapter 83 and Entry 0.1/15(2) reads as follows :-

Miscellaneous articles of base metal

----

1 2 3 4

83.01/15(2) Safes, strong boxes, strong 100% 41, 48 and 42

rooms (including linings and

doors thereof) cash and deed

boxes and the like; office

equipment (for example, filing

cabinets, racks, sorting boxes

paper trays and paper rests);

Other than office furniture

falling within Chapter 94;

fittings for loose leaf

binders, for files or for

stationery books; letter

clips, staples, indexing tags

and similar stationery goods,

stutuctes and other ornaments

of a kind used indoors;

flexible tubing and piping

beads and spangles bells and

gongs, non-electric and parts

thereof, stoppers, crown, corks,

bottle caps, capsules, bung

covers, seal and lombs case

corner protectors and other

packing accessories

The controversy between the parties is, under which heading the staples imported by the respondent will fall. The department contends that it

would come under Chapter 83 Entry 83.01/15(2), while the respondent contended that it would come under Heading 73.31. The learned counsel

appearing for the appellant contends before us by citing several catalogues of ''MAX'' that the staples imported by the respondent would fall under

Heading 83.01/15(2) and that the use of the words ""similar stationery goods"" in Item 83.01/15(2) gives an indication that the staples imported by

the respondent would definitely come under this item. Mr. Narsimhan, Senior Central Government Standing Counsel for the appellants reiterates

before us that the mere fact that the staples imported by the respondent are of thinner variety which are used for packing the readymade garments,

cannot be said that such staples are not used as stationery goods. On this ground, it is contended that correct classification of the staples imported

by the respondent would fall under the Heading 83.01/15(2) of the Customs Tariff Act, 1975. He also placed reliance on the decision reported in

The Collector of Customs, Madras Vs. K. Ganga Setty, and in V.V. Iyer of Bombay Vs. Jasjit Singh, Collector of Customs and Another, . In this case, caveat was filed and Mr. Blasubramanian, learned counsel for the respondent contends that the respondents has imported staples only for the

purpose of packing the garments in his business and that the said staples are of thinner variety. Both the learned counsel relied on the catalogue of

staples, namely, ''MAX''. We have perused the catalogue. The catalogue mentions the various uses of the staplers which are extracted below :

H.D. 10 USES : Office use, packaging use at home and in industries, handicraft lessons.

HD. 10N USES : Office use, packaging use at home and in industries, handicraft lessons.

HD. 10D USES : Stapling paper at office and factories, Packaging and sealing of sacks at shops, super market.

HD. 10C USES : Teaching materials for manual art.

HD. 10JA USES : For office, packaging in industries.

HD. 10B USES : Sealing of sacks at shops, supermarket, packaging in industries, etc.

HD. 3 USES : Stapling of documents in general at office and factory.

HD. 30L USES : Bookbinding, fastening of small bags, labelling of textile items.

HD. 12L USES : Stitching of thick documents, mounting bags and stachels book-binding.

On perusing the catalogue, it is clear that the contention of the department that the staples imported are predominantly used as stationery goods,

cannot be correct. We are unable to come to the firm conclusion that the staples imported by the respondent are predominantly used as stationery

goods. Thus, a reading of Heading 73.31, and 83.01/15(2) clearly shows that the types differ, on account of metal used in the manufacture of

staples. As far as Chapter 73 of the Customs Tariff Act is concerned, it has to be noted that it deals with iron and steel articles thereof, and

Chapter 83 deals with miscellaneous articles of base metal. Looking from this point of view, we are inclined to hold that the staples imported by

the respondent would fall only under Heading 73.31. This conclusion of ours is supported by the note given in Chapter 83 which reads as follows :

NOTE : In this Chapter, a reference to parts of articles is in no case to be taken as applying to cables, chains, nails, bolts, nuts, screws, springs or

other articles of iron or steel of a kind described in Heading No. 73.25, 73.29, 73.31, 73.32 or springs and leaves for springs or iron steel or to

similar articles of other base metals (Chapter 74 to 81 inclusives).

5. Both the learned counsel placed reliance on Rule 3 of the rules for the interpretation of the Customs Tariff Act, 1975, and Rules 3 reads as

follows :-

Rule 3 : When for any reasons, goods are, prima facie classifiable under two or more Headings, classification shall be effected as follows :-

(a) The Heading which provides the most specific description shall be preferred to Headings providing a more general description.

(b) Mixtures and composite goods which consists of different material or are made up of different components and which cannot be classified by

reference to (a) shall be classified as if they consisted of the material or component which gives the goods their essential character, in so far as this

criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b) they shall be classified under the Heading which equally meant consideration.

According to the learned counsel appearing for the respondent, the staples in question can easily be brought under Heading 73.31. His argument is

that the Heading, namely, Iron and Steel and articles thereof, will indicate that the staples in question will come under the Heading 73.31 and not

under 83.01/15(2). It must further be noted that the imported staples are made up of stainless steel. Under the circumstances, the contention of the

counsel appearing for the department that the staples imported by the respondent will fall under Heading 83.03/15(2) has no substance.

6. The counsel appearing for the department contends that the words occuring in Heading 83.01/15(2) ""similar stationery goods"" after the words

letter clips, staples, indexing tags"" indicate that staples imported will fall under Heading 83.01/15(2) as stationery goods and that apart, applying

Rule 3(c) Chapter 83, occuring later than Chapter 73, the staples occuring in Chapter 83 must prevail over the staples occuring in Chapter 73. We

are of the view that the argument of the learned counsel has no merit. It must be noted that the heading description for 73 is very specific and we

are inclined to agree with the learned counsel for the respondent that the staples in question will fall only under Heading 73.31 of the Customs

Tariff Act.

7. The counsel appearing for the caveator (respondent) placed reliance 73-D and contended that the staples used for office use are excluded from

Heading 73.31 and that the imported staples are not of that kind. There is force in this contention. We are of the view of perusing the records that

the staples in question will fall under Heading 73.31 and not under Heading 83.01/15(2) of the Customs Tariff Act.

8. The learned counsel for the appellants relying on a decision in The Collector of Customs, Madras Vs. K. Ganga Setty, contends that of two

constructions with respect to an entry arise, one in favour of the Revenue has to be adopted. We have perused the said decision. The decision

cited by the appellants'' counsel cannot be relied with respect to the proposition of levying duty. No decision has been cited by the learned counsel

for the department arising out of levy of excise duty where the Courts have taken the view that when two view are possible, one in favour of the

Revenue should be adopted. On the other hand, in Commissioner of Income Tax, West Bengal - I v. Vegetable Products Ltd. (1973) 88 ITR 92 ,

the Supreme Court has held that ""if the Court finds that the language of a taxing provision is ambiguous or capable of more meanings than one, then

the Court has to adopt that interpretation which favours the assessee, more particularly so, where the provision relates to the imposition of a

penalty"". Again in The Commissioner of Income Tax, West Bengal II, Calcutta Vs. Naga Hills Tea Co. Ltd., the Supreme Court has pointed out

that ""if a provision of a taxing statute can be reasonably interpreted in two ways, that interpretation which is favourable to the assessee has got to

be accepted"". In Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., it has been held by the Supreme Court that ""it

cannot be overlooked that even if two views are possible, the view which is favourable to the assessee must be accepted, while construing the

provisions of a taxing statute"". Under the circumstances, we are in complete agreement with the view expressed by Venkataswami, J. that in

matters of taxation when two view are possible, one in favour of the citizen has to be followed. On a reading of Headings 73 and 83 of the

Customs Tariff Act, that the view taken by the department is such, that no reasonable person can possibly take that the staple imported in the

instant case, would come under Heading 83 of the Act. The view taken by the Customs Authorities in assessing the staples under Heading 83 is unreasonable and has to be set aside. We are of the view on going through the facts of this case that the staples imported by the respondent do not

fall under Heading 83 and they cannot be taxed as done by the Assistant Collector of Customs more particularly when the department is of the

view that the staples imported by the respondent is being used for packing the readymade garments. This is the only point that has been argued by

the learned counsel appearing for the appellants. No other point has been raised before us excepting the point mentioned above.

9. We are of the view on going through the entire records and hearing the arguments of the respective counsel that there are no merits in the writ

appeal and the learned Judge has rightly held that the Assistant Collector of Customs is not right in assessing the staples in question under Heading

83.01/15(2) of the Customs Tariff Act, 1975. Under the circumstances, there are no merits in the writ appeal and it is accordingly dismissed.

10. Oral leave to Supreme Court sought for by the appellants'' counsel is granted.

