(1990) 03 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 1857 of 1990

Union of India APPELLANT

Vs

Sealol Hindustan Ltd. RESPONDENT

Date of Decision : 30-03-1990

Acts Referred:

Citation : (1991) 53 ELT 295

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : Shri R.L. Dalal, Mr. S.M. Shah and Mr. K.C. Sidhwa, for the Appellant; Shri T.R. Andhyarujina, Shri M.D. Siodia and Shri Dinesh Parekh, for the Respondent

Judgement

Sugla, J.—The impugned order dated 20th June, 1990 of the learned Single Judge is on the basis of an earlier judgment dated 22/23 March, 1988 of this Court in the petitioners'' own case. The said earlier judgment was accepted by the appellants. Following the said judgment, Madras High Court had also, by its judgment dated 8th December, 1988, allowed Writ Petition No. 3721 of 1982.

2. Ordinarily, therefore, it would have been in order for this Court to straight away dismiss the appeal. Referring to General Rules for the Interpretation of the First Schedule - Import Tariff (Section 2), in particular the General Explanatory Note thereto, Shri Dalal, the learned counsel for the appellants, however, stated that Parts of all kinds of pumps fall under Entry No. 8413.91 and that this aspect requires consideration. But this aspect, assuming it requires consideration, was admittedly not urged before the learned Single Judge who allowed the petition at the stage of admission itself. Even otherwise, we find that nothing much turns on this aspect even if it is assumed that Shri Dalal''s submission is correct.

3. The petitioners manufacture Mechanical Seals in technical collaboration with M/s. E. G. & G Sealol, U.S.A. The Mechanical Seals are specially designed for fitment into Centrifugal Pumps only. For the manufacture of the said Mechanical Seals the petitioners have been importing various parts/components. The case of

the appellants is that Parts of all kinds of pump fall under Entry No. 8413.91 and not under 8413.70. Alternative claim is that Mechanical Seals are or can be used by the petitioners not only as part of and in the manufacture of Centrifugal Pumps but also in the manufacture of many other articles and, therefore, Mechanical Seals cannot be considered parts of Centrifugal Pumps assuming as part of Centrifugal Pumps they are liable to the same duty as is leviable on Centrifugal Pumps.

4. For the present we will assume that Mechanical Seals are parts of Pumps and fall under Entry No. 8413.91 also. The question will still remain whether being a part of Centrifugal Pump it falls to be considered for the purpose of duty as an item under Entry No. 8413.70. Centrifugal Pumps admittedly fall under Entry No. 8413.70. Admittedly again Notification No. 155/86-Cus. is applicable in this case. The dispute is only regarding whether the benefit of Notification No. 59/87 is also available. Explanation 1 to Notification No. 155/86 clearly provides that the said notification is to be read with other notifications, namely, 59/87-Cus., dated 1-3-1987, 154/86-Cus., dated 1-3-1986 and 60/87 Cus., dated 1-3-1987. The effect of the Explanation is that duty on a part of an article is not to exceed the duty on the article of which that part is a Part and is used in the manufacture thereof provided the main article finds place in the notification. It is not even suggested that Mechanical Seal is not a Part or is not used in Centrifugal Pumps. What is suggested is that it is also used or in any event can be used as a Part in the manufacture of many other articles. It is on record that the Director of Industries has certified that Mechanical Seals are used by the petitioners as Part of Centrifugal Pumps. Moreover, when the goods are released, the petitioners have to execute a bond to the effect that the Mechanical Seals are and will only be used in Centrifugal Pumps.

5. Thus, in the facts of the case of duty on Mechanical Seals or Parts thereof has to be the same as the duty on Centrifugal Pumps under Entry No. 8413.70 as provided in the Notification No. 155/86-Cus. read with other notifications including Notification No. 59/87-Cus., dated 1-3-1987.

6. As regards the question of limitation in the matter of refund of duty, the petitioners applied for refund in pursuance of this Court''s judgment dated 22/23 March, 1988 in their own case. It is common ground that upto March 1988 assessments made from time to time were only provisional. Final order was passed on 2nd June, 1990 in which the plea of limitation was not taken. Even otherwise, the final order being of June 1990, the question of limitation cannot arise.

Accordingly, the appeal is rejected. No order as to costs.

7. Time for granting refund under the impugned order is further extended by eight weeks from today.