
(1988) 04 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 652 of 1982

Universal Cans and Containers Ltd., Bombay	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Customs Act, 1962 — Section 129A

Citation : (1988) 19 ECR 86 : (1988) 36 ELT 85

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. The petitioner is a limited company engaged in the manufacture of aluminium products and for the same it is importing raw material known as slugs or circles having a hole in the center. In the petition, it has been mentioned that slugs are basically industrial raw materials and are not finished products by themselves.

2. The petitioner received a show cause notice dated 19th of October 1981 from the Assistant Collector of Customs at Bombay, calling upon the petitioner company to show cause why aluminium slugs should not be classified under Heading No. 76.08/16 of the Customs Tariff Act and, accordingly, assessed to customs duty. The petitioner replied to this show cause notice by its letter dated 26th of October 1981. In this reply, the petitioner pointed out that the Collector of Customs, who is an authority higher than the Assistant Collector of Customs issuing the present show cause notice, has taken a view that the aluminium slugs imported by the petitioner are classifiable under Heading No. 76.03/04. This was done, according to the petitioner, by the Collector of Customs (Appeals), Bombay, on 17th of December, 1980 in Appeal No. DKS/MBI-2/80. This view has been subsequently reaffirmed by the same Collector.

3. The petitioner preferred an appeal against the show cause notice to the Collector of Customs, who by his order dated 30th of November 1981 differed from the view taken by the other Collector in the case of Metal Box India Ltd. (supra) and held that the product imported by the petitioner, namely, aluminium

slugs, are classifiable under Heading No. 76.06/07.

4. The petitioner has now approached this Court under Article 226 of the Constitution of India, challenging the said order of the Collector of Customs. Mr. Taleyarkhan, the learned Advocate, appears in support of the petition and contends that the Collector of Customs in the instant case was in error in not adopting the view which has been the view of the department. It is his contention, and it is not totally unjustified, that if a view has been taken and has become prevalent in the department, in the interest of continuity and consistency another officer of coordinate jurisdiction should be slow in differing from the said view and in taking a different view. Mr. Taleyarkhan wanted also to argue on merits. However, I have found it unnecessary to hear him on the merits of the case.

5. I am in agreement with the contention of Mr. Bulchandani that a further appeal lies against the order of the Collector and this is not a fit case wherein the jurisdiction of the High Court under Article 226 of the Constitution can be legitimately invoked. I agree with him also for the reason, among others, that it cannot be said that the view taken by the Collector in the earlier appeal decided on 17th of December 1980 is the settled view which has been accepted by the department. The second Collector, who has passed the impugned order is of a coordinate jurisdiction and in a given case, for reasons which are given, as it has been done in this instance, he can differ from a view taken by another officer of a coordinate jurisdiction. The only way the difference in the two views can be settled is by way of an appeal to the authority to whom such appeal lie. It is not necessary, indeed it may be inadvisable for the High Court, to resolve the difference between the views of two officers of the rank of Collector of Customs in the proceedings under Article 226 of the Constitution. This is so especially when an appeal lies from an order of the Collector to the appellate authority which should resolve the conflict of views between the officers. I am, therefore, inclined to reject this petition on the ground that the petitioner ought to avail of the right of appeal.

6. Mr. Taleyarkhan, however, points out that in view of the fact that rule has been issued on this petition and the petition itself is pending for such a long time, that is since the year 1982, the appeal that may be presented by the petitioner will be beyond the period of limitation prescribed u/s 129A of the Customs Act, 1962 and it may be that the Tribunal may not condone the delay in the filing of the appeal. I am sure that the Tribunal will not take such a view. The fact that the petition is pending in the High Court since the year 1982 and now is being dismissed on the ground that alternative remedy lies, will be taken into consideration by the Tribunal. On the facts and circumstances of this case, the Tribunal will surely regard the pendency of the petition under Article 226 of the Constitution in this Court and the order I am now passing will be regarded as sufficient cause for admitting the appeal beyond the period of limitation mentioned in the Customs Act. The department, of course, will not contend that

this is not a sufficient cause for the condonation of delay. This has been so stated by Mr. Bulchandani, on behalf of the respondents.

7. In the result, rule is discharged but with no order as to costs. The interim orders passed in this petition shall continue to be in force till 30 days after the communication of any order that may be passed by the Tribunal on an application made by the petitioner, for interim relief. The appeal shall be presented by the petitioner along with an application for condonation of delay, on or before 27th of May 1988.