(2003) 11 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5445 of 2003

U.P. Vanaspati Producer''s Association APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Customs Tarrif (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000 — Rule 5, 7, 8

Citation : (2010) 254 ELT 443

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Jayant Bhushan and Reetesh Singh, for the Appellant; Aman Lekhi and Harish Pandey, for the Respondent

Judgement

1. By this writ petition, the U.P. Vanaspati Producers'' Association seek quashing of Notifications No. 26/2000-Customs, dated 1 March 2000 and No. 43/2003-Customs, dated 18 March 2003, issued by the Government of India, granting 100% exemption from levy of import duty on imports of edible oils from Sri Lanka under the Indo-Lanka Free Trade Agreement (FTA in short). The writ petition is based on the apprehension of the petitioners that the notifications do not provide a level playing field to the domestic manufacturers of edible oils vis-a-vis the manufacturers of edible oil vanaspati in Sri Lanka.

2. The stand of the petitioners is that the said notifications grant unwarranted preferential treatment to the imports of edible oil from Sri Lanka in as much as on the one hand the domestic manufacturers have to suffer 65% import duty on the import of basic raw material with the stipulation that at least 25% raw material has to be from domestic market, as per the provisions of Vegetable Oil Products (Regulation) Order, 1998, on the other, the same manufacturer in Sri Lanka under the FTA has neither to pay any import duty for import of raw material into Sri Lanka nor has he to pay import duty when the final product is exported to India. The apprehension of the petitioners, in nutshell, is that

impugned exemption notifications are bound to cause "serious injury" to domestic producers and, therefore, the Government of India must take action under the safeguard measures, provided in Article VIII of the FTA. The allegation is that numerous representations to the Government of India in this behalf have not evoked any response.

3. Having regard to what is stated in the reply affidavit, filed on behalf of the Union of India, in our view, for the present, the apprehension of the petitioners is unfounded. In the reply affidavit, filed on behalf of the Ministry of Commerce and Industry, it is stated that the respondents have already informed the Sri Lankan Government that if the value addition to the Crude Palm Oil is to the tune of 20%, duty free imports of vegetable oils would not be permitted in terms of Rules of Origin under FTA. To refute the allegation that the government has not taken any action to redress the grievances of the petitioners, reliance is placed on a letter dated 18 July 2003, addressed by the Secretary, Ministry of Commerce and Industry, Govt. of India to his counterpart in the Govt. of Democratic Socialistic Republic of Sri Lanka. For the sake of ready reference, we deem it appropriate to extract the relevant portion of the said letter. It reads as follows:

It is learnt that for the manufacture of vanaspati in Sri Lanka, these plants will import crude palm oil from other countries, convert it to the vanaspati and export the same to India in order to get zero duty benefit. We have examined the issue, and it has been found that in the process of conversion from crude palm oil to vanaspati, it would not be possible to achieve 35% value addition. The conversion from crude oil to vanaspati involves neutralizing, breaching, deodourising and finally hydrogenate on. All these processes taken together will at best achieve 20% value addition, given the fact that crude palm oil is not available in Sri Lanka and will necessarily have to be imported from third countries.

In view of the facts stated above, we are of the firm opinion that the prescribed value addition norms cannot be fulfilled by vanaspati industry in Sri Lanka. This would require special care to be taken by the authorities issuing certificate regarding origin. Imports of vanaspati which would not satisfy the origin requirement would not be allowed to get the benefit of tariff concessions under the India-Sri Lanka FTA.

4. From the afore-noted letter, it is clear that the Government of India is alive to the difficulties which the domestic manufacturers of vanaspati are likely to face if the exports of vanaspati edible oil from Sri Lanka are made to India without strictly complying with the requirements, as stipulated in Rule 5 read with Rule 7 and Rule 8 of the Customs Tarrif (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000. In addition, it is also pointed out that for the present, the imports of vegetable fats, edible oils from Sri Lanka are negligible in comparison to the other countries and, therefore, the domestic

vanaspati producers are not at all affected by the FTA. In view of the categorical stand of the Government of India in the affidavit, briefly referred to above, we are of the view that as at present when imports of edible oil from Sri Lanka are negligible, there is no "threat of serious injury" to the petitioners under the FTA, warranting action under Article 11(6) of the FTA.

5. In this view of the matter, we deem it unnecessary to go into the validity of the impugned notification. We are of the view that for the present no further orders are called for in this writ petition and the same stands disposed of accordingly.

