(1993) 06 BOM CK 0051

In the Bombay High Court

Case No : W. P. No. 1678 of 1983

Victory Plastics Pvt. Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 16-06-1993

Acts Referred:

Citation : (1993) 48 ECR 381 : (1993) 67 ELT 467

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Shri D.D. Madon, instructed by M/s K. Udderkat and Co, for the Appellant; Shri H.V. Mehta, for the Respondent

Judgement

This Judgment has been overruled by : Union of India (UOI) Vs. Victory Plastic Pvt. Ltd. and Another, (1996) 3 AD 64 : (1996) 83 ELT 481 : (1996) 2 SCALE 697 : (1996) 8 SCC 41 : (1996) 2 SCR 568

Pendse, J.—The short question which falls for determination in this petition filed under Article 226 of the Constitution is whether the Assistant Collector of Customs, Refund Department was justified in rejecting the refund application filed by the petitioners on the ground that the exemption sought from payment of duty was not available. Only few, facts ar required to be stated to appreciate the grievance of the petitioners.

The petitioners imported PVC resin which is liable to payment of customs duty under Tariff Item No. 39.01/06 of First Schedule to the Customs Tariff Act, 1975. The Central Government in exercise of powers conferred by sub-section (1) of Section 25 of the Customs Act had published exemption notification providing that PVC resin falling under Chapter 39 when imported into India shall be exempted from the whole of duty of customs leviable thereon. The exemption notification from the whole of duty of customs leviable thereon. The exemption notification was to remain in force upto and inclusive of March 31, 1981. The Central Government issued another notification dated October 16, 1980 superseding the earlier notification dated March 15, 1979 and limiting the exemption to the duty leviable which is in excess of 40% ad valorem.

2. It is not in dispute that the petitioners opened letters of credit on November 20, 1980 i. e. after the publication of the second notification. The petitioners claimed advantage of the first notification in respect of import in pursuance of this letters of credit. The claim was denied by the department and the petitioners cleared the goods after payment of duty as contemplated by the second notification. The petitioners thereafter applied for refund of excess duty paid claiming that the petitioners were not liable to pay any amount of duty in view of the exemption granted by the first exemption notification was to remain in operation upto March 31, 1981 and it was not permissible for the Central Government to withdraw the advantage conferred before the expiry of that date. The refund sought by the petitioners was denied and that had given rise to the filing of the present petition.

3. Shri Madon, learned counsel appearing on behalf of the petitioners, submitted that the controversy in this petition stands concluded by decision of Division Bench of this Court reported in 1988 ECR 659 (Bom) Beria Chemicals and Traders, Bombay v. The Union of India and Others. The Division Bench has taken the view that the advantage granted by the first exemption notification cannot be withdrawn before March 31, 1981. In view of this judgment of the Division Bench, the petitioners are obviously entitled to claim benefit of the first exemption notification even though the letter of credit was opened after publication of the second notification. Shri Mehta, learned counsel appearing on behalf of the respondents, submits that the petitioners are not entitled to the refund of the amount of customs duty of Rs. 74,950.24. Shri Mehta submitted that the department will have to verify the claim apart from examining whether such refund is permissible in view of the amended provisions of Section 27 of the Act. Shri Mehta is right in his contention. The respondents will have to examine the claim of refund in the light of the amended provisions and if permissible, will have to further verify the accuracy of the claim.

4. Accordingly petition success and rule is made absolute in terms of prayer (a). The Assistant Collector is directed to examine the claim of refund in the light of amended provision of Section 27 of the Customs Act and if found admissible, then verify the accuracy of the claim and make refund. In the circumstances of the case there will be no order as to costs.