(1992) 12 BOM CK 0024

In the Bombay High Court

Case No : Appeal No. 973 of 1989 in W. P. No. 2876 of 1982

Vishal Electronics Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:
Customs Act, 1962 — Section 131, 25

Citation : (1993) 47 ECR 536 : (1993) 68 ELT 557

Hon'ble Judges : M.S. Rane, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri D.H. Mehta, instructed by M/s. Pramodkumar and Co, for the Appellant;

Judgement

1. This is an appeal preferred by the original petitioners to challenge legality of judgment dated July 12, 1989 delivered by learned Single Judge in Writ Petition No. 2876 of 1982 filed by the appellants. By the impugned judgment, the petition was dismissed and the claim of the appellants for advantage of notification dated August 8, 1977 was turned down. The facts which gave rise to the litigation are as follows :

2. The appellants are engaged in the manufacture of closed circuit television cameras and for the purpose of manufacture, the appellants are required to import various components including lenses which are optical appliances of a very sophisticated nature. The lenses are liable to payment of excise duty in accordance with Tariff Item No. 90.02 of the Customs Tariff Act, 1975. The relevant entry reads as under :

"90.02 Lenses, prices, mirrors and other Rate of duty a optical elements of nay material applicable to the instrumented being parts of or fittings instruments or apparatus to for instruments or apparatus, other which they are parts or than such elements of glass in optical fittings. work.

The close circuit Television cameras of which the lenses are part, are liable to payment of duty under Tariff Item No. 85.15(1) of the Customs Tariff. The tariff entry reads as under :-

"85.15. Radio-telegraphic and radio telephonic transmission and reception apparatus, radio broadcasting and television transmission and reception apparatus (including receivers incorporating sound recording or reproducers and television cameras) radio, navigational aid apparatus, radar apparatus and radio remote control apparatus :

(1) Not elsewhere specified 100%

(2) Radio broadcast receiver including those incorporating gramophones, televisions reception apparatus 100%

The Government of India in exercise of powers under sub-section (1) of Section 25 of the Customs Act, 1962 published exemption Notification No. 172-Cus. dated August 8, 1977 exempting goods falling under Tariff Item No. 85.15 of the Customs Tariff Act, other than those specified in the corresponding entry in Column 4 of the table annexed to the exemption notification. The exemption of duty was to the extent in excess of rates specified in entry in column 3 of the table. The exemption available in respect of import of items under Tariff Heading No. 85.15 was to the extent of 60% ad valorem.

3. On January 28, 1981, the appellants secured invoices for purchase of 11 pieces of lenses to be imported under open general licence. The appellants filed the bill of entry for home consumption claiming exemption under notification for payment of duty at 60% ad valorem. The Assistant Collector by order dated March 17, 1981 rejected the claim seeking exemption on the ground that the goods were correctly assessed under Tariff Item No. 90.02. The appellants thereupon carried appeal before the Collector of Customs (Appeal) and the appeal was allowed by order dated June 5, 1981. The appellate authority held that the lenses imported by the appellants were for use in T. V. cameras only and the advantage of the exemption notification is available.

On September 14, 1981, the Government of India, Ministry of Finance, served show cause notice in exercise of powers u/s 131(3) of the Customs Act upon the appellants to explain why the order of the appellate authority should not be set aside. The show cause notice, inter alia, recites that the Government is tentatively of the view that the benefit of the notification to the goods classifiable under Heading 90.02 of the Central Tariff was not available. The appellants filed reply to the show cause notice and Joint Secretary of the Government of India by order dated July 7, 1982 made the notice absolute and set aside the order of the appellate authority. The Government held that the benefit of partial exemption in terms of notification is available to goods which are specified in table appended to the notification and, therefore, the benefit can be extended only to goods falling under Tariff Entry 85.15(1) and not to goods under Tariff Entry 90.02. The decision recorded by the petition ended in dismissal by the impugned judgment.

4. Shri Mehta, learned Counsel appearing on behalf of the appellants, submitted that the view taken by the Central Government/the learned Single Judge is not correct. The learned counsel urged that rate of duty applicable in respect of goods imported and classifiable under Tariff Item No. 90.02 is the rate applicable to the instruments or apparatus to which they are parts of fittings. It was contended that the appellants had imported lenses classifiable circuit television cameras, the duty payable will be as prescribed under Tariff under items falling under Tariff Item No. 90.02 is to be determined with reference to the rate applicable to goods falling under Tariff Item No. 85.15 is equally applicable to goods falling under Tariff Item No. 90.02. We find considerable merit in the submission of the learned Counsel. The exemption notification clearly provides that rate of duty will be 60% ad valorem of the rate payable under Tariff Item No. 85.15 of the Customs Tariff. It is not in dispute that the rate applicable to goods under Tariff Item No. 90.02 is one which is applicable in respect of Tariff Item No. 85.15. It is, therefore, difficult to appreciate how the Government can claim that the available to the goods imported and classifiable under Tariff Item No. 90.02. The learned Counsel appearing on behalf of the appellant very rightly pointed out that the appellants were earlier permitted to clear lenses on payment of basic excise duty at the rate of 60% ad valorem and the same rate was charged in respect of subsequent import. The learned Single Judge pointed out that this claim was not controverted by the respondents by filing return.

The learned Single Judge declined to grant relief on the ground that the expression rate of duty applicable in Tariff Item No. 90.02 cannot mean the rate of duty which is leviable from time to time and subject to the exemption available under notification published u/s 25 of the Act. We are afraid, we are unable to share the view of the learned single Judge. It is not correct to suggest that the ambit of the exemption notification is widened by including the goods classifiable under Tariff Item No. 90.02. The plain reading of the two tariff items and the exemption notification leaves no manner of doubt that the appellants are entitled to the benefit of exemption notification. In these circumstances, the decision of the learned Single Judge as well as the order passed by the Central Government cannot be sustained. It is required to be stated that identical orders were passed in respect of another bill of entry filed by the appellants and Writ Petition was filed to cover both the bills of entries.

5. Accordingly, appeal is allowed and judgment dated July 12, 1989 delivered by learned Single Judge in Writ Petition No. 2876 of 1982 as well as order dated July 7, 1992 passed by Joint Secretary of Government of India are set aside and order dated June 5, 1981 and June 25, 1981 in respect of two appeals passed by the Collector of Customs (Appeals) stands restored. In the circumstances of the case, there will be no order as to costs. The Bank guarantee furnished by the appellants stands discharged.