
(1989) 07 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 2876 of 1982

Vishal Electronics Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Customs Act, 1962 — Section 12(1), 15(1), 2(15), 25, 25(1)

Citation : (1990) 29 ECC 34 : (1989) 44 ELT 420

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The petitioners manufacture closed circuit television cameras. Closed circuit television lenses are components of such cameras. The petitioners imported closed circuit television lenses from Japan and filed Bills of Entry in respect thereof in February and March 1981.

2. The heading under the First Schedule to the Customs Tariff Act relevant to such import is numbered 90.02 and reads thus :

"90.02 Lenses, prisms, mirror and Rate of duty applicable other optical elements of any material to the instruments mounted, being parts of or fittings or apparatus to which for instruments of apparatus, other they are parts or than such elements of glass in fittings." optical work,

3. The rate of duty applicable to carry CCTV cameras is set out Heading No. 85.15, which reads thus :

"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

100%" incorporating gramophones, television reception apparatus

4. There is an exemption notification dated 8th August 1977 which applies, inter alia, to goods covered by Heading No. 85.15.1, which is to say that it applies to television cameras. Thereunder, goods falling under the headings or sub-headings of the First Schedule to the Customs Tariff Act specified in Column 2 of the Table annexed thereto, other than those specified in the corresponding entry in Column 4 of the Table, when imported into India are exempt from so much of that portion of the Customs duty leviable thereon, which is specified in the First Schedule, as is in excess of the rate specified in the corresponding entry in Column 3 of the Table. In regard to goods covered by Heading No. 85.15.1, the exemption is in respect of that portion of Customs duty leviable thereon (100% ad valorem) as is in excess of 60% ad valorem.

5. On 14th March 1981 the petitioners wrote to the Assistant Collector of Customs in relation to the imports of the said lenses. They contended, basing themselves upon the aforementioned provisions, that the said lenses were chargeable to Basic Customs duty at the same rate as C.C.T.V. cameras, viz., 60% ad valorem. The Assistant Collector, Customs, rejected the petitioners' contention and held that the said lenses were liable to Basic Customs duty at the rate of 100% ad valorem. The petitioners preferred an appeal. The Appellate Collector of Customs allowed the appeal. The petitioners thereafter received a notice from the Government of India to show-cause why the Appellate Collector's order should not be reviewed. The petitioners showed cause but the Government of India set aside the order of the Appellate Collector and restored the order of the Assistant Collector. It was held that goods falling under Heading No. 90.02 carried the same statutory rate of duty as was applicable to the main article of which they were parts. The statutory rate of duty on cameras under Heading No. 85.15.1 was 100%. This, therefore, was the rate of duty applicable to the said lenses. The benefit of the exemption notification was available only to goods which were specified in the table appended to it. Since goods under Heading No. 90.02 were not specifically included in the table appended to the exemption notification, the benefit of the exemption given thereby could not be extended to the said lenses.

6. This writ petition impugns the order in revision.

7. My attention has been by counsel to certain provisions of the Customs Act. Under sub-section (15) of Section 2 duty is defined as the duty of customs leviable under that Act. Sub-Section (1) of Section 12 states that, except as otherwise provided in the said Act or any other law for the time being in force, "duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force on goods imported into, or exported from, India". Sub-Section (1) of Section 15 states that the rate of duty and tariff valuation, if any, applicable to any imported goods shall be the rate and valuation in force on the dates therein stated. Section 25 empowers the Central Government, if it is satisfied that it is necessary in the

public interest so to do to, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions..... as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon".

8. It was submitted by Mr. Mehta, learned Counsel for the the petitioners, that the words "the rate of duty applicable to" in Heading No. 90.02 must be read as meaning the rate of duty which is specified in the First Schedule to the Customs Tariff Act subject to an exemption that may have been given under the provisions of Section 25. He pointed out that exemption under the exemption notification was given to the instrument and submitted that the exemption notification should be read as giving exemption also to the components of such instrument. He submitted that if there was any ambiguity in the words "rate of duty applicable to" they should be construed in favour of the tax-payer.

9. Mr. Mehta also pointed out that in the past the petitioners themselves had been permitted to clear lenses similar to the said lenses upon payment of Basic Customs duty at the rate of 60% ad valorem. There was no affidavit in reply filed by the respondents and the averments in this behalf in the petition, therefore, remained uncontroverted.

10. The words "rate of duty applicable to" in Heading No. 90.02 can, I think, be read as referring only to the rate of duty specified in other headings in the First Schedule to the Customs Tariff Act. The words cannot be read as meaning the rate of duty which, from time to time, is leviable, having regard to an exemption, if any, given under the provisions of Section 25.

11. It is relevant also to note that under sub-section (1) of Section 25 the Central Government must set out in the Notification thereunder the "goods of any specified description" which are exempted from Customs duty. It would, therefore, be impermissible to read into an exemption notification u/s 25 goods which are not, in fact, specified therein. This is in accord with the general principle of construing an exemption notification. It cannot be read as conferring a benefit upon goods or persons not described therein. It must be read as covering only such goods of persons as are described in it.

12. Reference may be made to the judgment of the Supreme Court in *Hansraj Gordhandas Vs. H.H. Dave*, Assistant Collector of Central Excise and Customs, Surat and Others, . The Supreme Court said that it was well established that in a taxing statute there was no room for any intendment. The entire matter was governed wholly by the language of the notification. If the tax-payer was within the plain terms of the exemption he could not be denied its benefit by calling in aid any supposed intention of the exemption authority.

13. It must be assumed that had the Central Government intended to extend the benefit of the exemption given by the said notification to the goods covered by Heading No. 90.02, it would have specified that heading in the notification. There is no scope for reading the goods covered by Heading No. 90.02 into the

notification on the basis that the intendment of the Central Government must have been to extend to components the benefit that it had extended to the instrument.

14. That similar goods have in the past been cleared upon payment of basic customs duty at the rate of 60% ad valorem cannot make any difference to the interpretation of the relevant provisions.

15. In the result, the petition is dismissed.

16. The respondents shall be free to encash the bank guarantees given by the petitioners pursuant to the interim order.

17. No order as to costs.

18. Upon the application of Mr. Mehta, the respondents shall encash the bank guarantees only after the expiry of the period of 8 weeks from today. Mr. Mehta states that the bank guarantees shall be kept alive for this period and for 2 weeks thereafter.