(2002) 11 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 940 of 1988

Vishnu Vijay Packagers (P) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Customs Act, 1962 — Section 68

Citation : (2003) 2 BomCR 35 : (2003) 111 ECR 557 : (2003) 158 ELT 132

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : S.R. Garud and D. Pednekar, instructed by Gagrat and Co, for the Appellant; R. Asokan, instructed by T.C. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

Vijay C. Daga, J.—The petition is directed against the action of the Respondents in claiming, demanding and/or trying to recover import duty on the "Dival Multi-layer Coater machine", imported by the Petitioners without affording benefit of the exemption Notification No. 125/86.

THE FACTS

2. The facts in narrow compass are that Petitioners had imported a ''Dival Multi-layer Coater machine'' which was fully covered by Entry No. 32 of Exemption Notification No. 125/86, dated 17-2-1986. On 13-4-1987 the petitioner had filed a Bill of Entry for warehousing of the said machines, claiming benefit of exemption Notification No. 545 of 1986. On 15th December, 1987 the petitioners filed an ex-bond Bill of Entry for clearance of the said machine from warehouse for home consumption and once again claimed the benefit of the said Exemption Notification No. 125/86.

3. On 22nd December, 1987, the petitioners once again requested the Respondents to assess the said Bill of Entry stating that the draft towards payment of import duty amount was lying ready with them. This letter dated

22nd December, 1987 addressed to the Asstt. Collector of Customs is on record at Exhibit-C (page 27 of this petition). The Respondents for the reasons best known to them, did not assess the Bill of Entry as the Officers of the respondents were entertaining certain doubts about the said machine.

4. On 7-1-1988 the Petitioners in order to remove any doubt which the Respondents were entertaining obtained a letter from the supplier confirming that the said machine was ''Dival Multi-layer Coater Machine'', which is covered under Notification No. 125/86. The petitioners by their covering letter dated 11-1-1988 forwarded a copy of the supplier''s letter and requested the Respondents to assess duty extending benefit of the Exemption Notification No. 125/86.

5. The machine was re-examined by the Respondents. It was cleared by them on 29-2-1988. An order of assessment was passed on the Bill of Entry accepting that the said machine was ''Dival Multi-layer Coater Machine'' and was held entitled for exemption under Exemption Notification No. 125/86. However, petitioners could not take delivery of the machine up to 1-3-1988 for which Petitioners are throwing blame on Revenue.

6. It further appears that subsequent to 29-2-1988 i.e. on 1-3-1988 the Notification No. 125/86 came to be amended and the exemption which was available to the said machine came to be withdrawn consequently, the Petitioners were asked to pay the entire duty, ignoring the Exemption Notification No. 125/86, since the actual delivery of machine was not taken by the Petitioners till 1-3-1988 and it was lying warehoused.

7. Being aggrieved by the above action of the Respondents, the Petitioners invoked the Writ Jurisdiction of this Court under Article 226 of the Constitution of India. This Court while granting rule passed interim order on 4-4-1988 in terms of prayer Clause (c) and allowed the machine to be cleared, subject to furnishing bank guarantee for the amount of differential duty within the stipulated period allowed in the order. Accordingly, bank guarantee was furnished by the Petitioners. The machine was allowed to be released.

THE SUBMISSION

8. The learned Counsel appearing for the Petitioners contended that in view of Section 68 of the Customs Act, the Petitioners as importers of warehouse goods had presented Bill of Entry for home consumption in respect of the subject machine in the prescribed form and the import duty leviable on such machine was offered but the Assessing Officer did not accept the same. The Petitioner, therefore, submits that the requirements as contemplated u/s 68 were complied with in its true letter and spirit whatever was within the command of the Petitioners was done by them. They had complied with the provisions of Section 68 of the Customs Act. The learned Counsel for the petitioners relied upon the judgment of the Apex Court in the case of M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others, and contended that u/s 15, the rate of

duty and tariff valuation if any, applicable to any imported goods is to be the rate and valuation in force in the case of the goods cleared from a warehouse u/s 68 prevailing on the date on which the goods are actually removed from the warehouse.

9. The concept of deeming provision cannot be introduced while determining the question of actual removal of the goods from the warehouse. Admittedly the petitioners had discharged its part of the legal duty by presenting bills of entry and complying with the provisions of Section 68(a) and (b) on 15-12-1987. But the Customs Officer refused to release the goods/machine on an erroneous assumption that the machine in question was not ''Dival Multi layer Coater Machine'', as such Petitioners cannot be denied the benefit of Exemption Notification No. 125/86.

10. The learned Counsel for Revenue is not in a position to dispute that the payment of duty, was not offered by the petitioners prior to 29-2-1988. It appears that is the Revenue who did not accept payment of duty though it was offered and tendered.

FINDINGS

11. In the instant case, on fulfilment of the conditions set out u/s 68 of the Customs Act, the order was passed on 29-2-1988 allowing clearance of the goods from warehouse for home consumption. Therefore, in the light of the decision of the Apex Court in the case of Priyanka Overseas Pvt. Ltd. (supra), the rate of duty applicable to the goods will be rate prevailing on the date of clearance ordered on 29-2-1988. Accordingly, the Petitioner is entitled to avail the benefit of Exemption Notification No. 125/86. The Revenue cannot take undue advantage of the delay on its part in passing the order of clearance, especially when the assessee had fulfilled all the conditions long ago. Thus, the Revenue is not justified in holding that the petitioner is not entitled to the benefit of Exemption Notification No. 125/86. In this view of the matter, the demand raised by the Revenue is held to be null and void and same is set aside.

12. Since the goods have been allowed to be cleared under interim order of this Court on payment of admitted amount of duty, the Petitioner are entitled to receive bank guarantee with necessary endorsement for cancellation thereof.

The petition is allowed. Rule is accordingly made absolute in terms of this order, with no order as to costs.