**(1994) 03 BOM CK 0052**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1442 of 1984

Zoom Films Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 09-03-1994

**Acts Referred:**

Customs Act, 1962 — Section 25(1)

**Citation :** (1994) 52 ECR 364 : (1994) 71 ELT 898

**Hon'ble Judges :** P.S. Patankar, J;M.L. Pendse, J

**Bench :** Division Bench

**Advocate :** Shri S.U. Kamdar, instructed by M/s. Chanekar and Company, for the Appellant; Shri L.S. Vyas, for the Respondent

## Judgement

Pendse, J.—The controversy in this petition filed under Article 226 of the Constitution of India lies in a narrow compass. The petitioners were registered as Small Scale Industrial Unit with Directorate of Industries for manufacture of various plastic articles. The list of items under registration included manufacture of Video Cassettes. The petitioners used Polyacetal Resin as raw material for manufacture of Video Cassettes and the raw material was required to be imported.

2. The Government of India published notification dated August 18, 1983 in exercise of powers conferred under sub-section (1) of Section 25 of Customs Act reducing the duty of customs payable from 100% ad valorem to 40%. By another notification dated March 1, 1984, the entire payment of auxiliary duty on the imported articles was exempted from payment. The benefit of the exemption notification was available provided the importer produced certificate of Small Scale Industries Directorate certifying that the importer is actual user and the raw-material imported is required as one of the item in respect of manufacture of Video Cassettes. The petitioners secured such certificate on March 2, 1984 and the certificate recommended import of total quantity of 150 metric tonnes of Polyacetal Resin.

 

The petitioners imported 17 metric tonnes of Polyacetal Resin from Japan and the consignment arrived at Bombay Port on March 1, 1984. The petitioners filed bill of entry for home consumption but the consignment was not cleared as the Customs Officer failed to pass order of clearance. The delay in completing assessment gave rise to the filing of the present petition on July 10, 1984.

3. On admission of the petition by interim order dated July 16, 1984 the petitioners were permitted to clear 5 metric tonnes on the basis of exemption notification and the remaining 12 metric tonnes on payment of duty. The order was varied on October 5, 1984 and the petitioners were permitted to clear the entire consignment in accordance with exemption notification.

Shri Kamdar, learned counsel appearing on behalf of the petitioners, submitted that the respondents did not complete the assessment and had no reason whatsoever to deny the benefit of exemption notification. The learned counsel urged that all the requisite conditions for securing benefit of exemption notifications were satisfied by the petitioners. The respondents have not filed any return in answer to the averments made in the petition and we are unable to appreciate why the bills of entries were not cleared by giving benefit of exemption notification. Shri Vyas, learned counsel for the Department, submitted that there was some doubt about the capacity of the petitioners to consume imported articles but the doubt was removed after the Small Scale Industries Directorate increased the quota of import of the petitioners. In these circumstances, in our judgment, the petitioners are entitled to the relief.

4. Accordingly, petition succeeds but no relief is required to be granted as the imported consignment was already cleared by the petitioners by taking advantage of the exemption notification in pursuance of interim orders passed by the Court. In the circumstances, there will be no order as to costs.