Tradex Industries and another Vs Union of India and another

Writ Petition No. 692 of 1982

Court: Bombay High Court

Date of Decision: March 24, 1988

Acts Referred:
Central Excise Rules, 1944 â€" Rule 8(1)#Customs Act, 1962 â€" Section 27

Citation: (1988) 17 ECR 272 : (1988) 36 ELT 83

Hon'ble Judges: R.A. Jahagirdar, J

Bench: Single Bench

Judgement

1. The petitioners are engaged in the manufacture of fibre glass and for that purpose they import glass earn of Asahi fibre from Japan. They

imported certain quantity of this product between 9th May, 1978 and 17th January, 1981. The petitioners were forced by the Customs authorities

to pay countervailing duty on the said product to the extent of Rs. 1,76,421.62, details of which are given in Exhibit "C" annexed to this petition.

The petitioners contended that by notification dated 16th March, 1976 the manufacture of the said product, namely glass yarn, which is spun out of

fibre, is totally exempted from payment of countervailing duty. The respondents refused to accept this contention forcing the petitioners to

approach this Court under Article 226 of the Constitution of India for claiming refund of the amount paid by them under protest.

2. Mr. Thakkar, the learned Advocate appearing in support of this petition, has pointed out of these facts which are mentioned on affidavit in the

petition. He has also invited my attention to the notification dated 16th of March 1976, which is annexed to this petition at Exhibit "A". It mentions

that in exercise of the powers conferred by sub-rule (i) of Rule 8 of the Central Excise Rules, the Central Government exempts yarn spun wholly

out of glass fibre from the whole of excise duty levied thereon. In fact the petitioners were cautious enough to make an enquiry with the office, of

the Assistant Collector of Customs. The Enquiry Officer of the said office, by his letter dated 3rd October, 1977, informed the petitioners that

there was no countervailing duty payable on the import of fibre glass filament yarns. It has been mentioned by Mr. Thakkar that after the

notification of 16th March, 1976, some of the consignments imported by the petitioners were in fact allowed to be imported without payment of

countervailing duty. It is only in respect of those products imported between 9th May, 1978 and 17th January, 1981 that the respondents made

their illegal and unjust demand which the petitioners satisfied under coercion and under protest.

3. The petitioners have also annexed to this petition a copy of the order passed by the Government of India, Ministry of Finance in the Department

of Revenue, in a revision application preferred by M/s. Montex Glass Fibre Industries Private Ltd. It is at Exhibit "D". The said company was also

importing glass yarn of Asahi fibre - the same product which has been imported by the petitioners during period of mentioned above. The

Government held in its order disposing of the said revision application that the impugned glass yarn being wholly made of glass filaments was

covered by the exemption under the notification in question. In view of this position the Government allowed the revision application with a

direction that the impugned glass yarn would be exempted from the countervailing duty in terms of Notification No. 87/76, dated 16th March,

1976.

4. I do not see how there can be any answer to this petition and rightly, therefore, the respondents have not field any affidavit in reply, despite the

fact that the petition has been admitted as long ago as in the year 1982.

5. It must also be mentioned that Mr. Shah appearing for the respondents asked for an adjournment in order to file a reply to this petitions. I have

very freely refused to adjourn the matter. I regret to note that in all matters where the Union of India is the respondents, invariably, without

exception, adjournment motions are being made in matters which are of the year 1982 or even earlier. It may be, the office which is in charge of

attending to these matters may be having its own difficulties, but at some stage that office must set its affairs in order and enable Courts to go on

with the hearing of the petitions. I must make it clear at this stage that in these petitions which are almost ancient, no adjournments will ever be

granted on the mere ground that affidavits in reply have not been filed. If no reply could be filed for years together, I do not see how they can be

filed within a short time.

6. In the result, this petition must succeed. Rule is made absolute in terms of prayer Clauses (A), (B) and (C), except that the interest shall be at the

rate of 12% per annum instead of 18% per annum as prayed for. The respondents shall pay the costs of this petition to the petitioners.