(1975) 04 BOM CK 0015

Bombay High Court

Case No: Petition No. 121 of 1970

Western India Match Co. Ltd.		APPELLANT
	Vs	
The Union of India (UOI) and Another		RESPONDENT

Date of Decision: April 11, 1975

Citation: (1991) 33 ECR 349

Hon'ble Judges: B.P. Bhatt, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.P. Bhatt, J.

The Petitioners carry on business inter alia as manufacturers of matches and for that purposes they manufacture sodium chlorate and potassium chlorate. The potassium chlorate is an important constituent of a match head and is used by the Petitioners for coating their match sticks. The sodium chlorate manufactured by the Petitioners is intended mainly for the bleaching of pulp, oxidation in the manufacture of dyestuffs etc. For this purpose it is necessary that the said chlorates be manufactured by a process known as electrolysis. This process required the passing of a direct electric current through a tank containing sodium or potassium chloride. The Petitioners state that as a result of the passage of such electric current, the sodium chloride becomes sodium chlorate and potassium chloride becomes potassium chlorate. The electrodes which are at positive potential are known at anodes whereas electrodes which are at negative potential are known as cathodes. It is the Petitioners'' case that there are several types and designs of such cells can be and are ordinarily employed for the said process, what is known as magnetite anodes, which is a special kind of iron oxide consisting of ferric iron and ferrous iron in a ratio of 1.9 to 2. The Petitioners say that they have been using the said electrolysis plant since about the year 1942. Prior to 1967, the Petitioners were importing magnetite electrodes from Sweden, in accordance with the cast

dimensions suitable for their use in the said cells in their factory. After 1967, the magnetite electrodes were imported without such coating done on the same and without the copper strip being attached thereto as it was found possible by the Petitioners technically to do such coating and the attaching of such strips in India. The relevant items in respect of these goods which were imported from Sweden were Entries Nos. 72(c) and 72(3) and 8 7 of the Indian Customs and Central Excise Tariff. Items Nos. 72(c) and 72(3) dealt with the importation of apparatus and appliances, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose, and component part of machinery as defined in Item Nos, 72, 72(1) and 72(2) and not otherwise Specified. Item No. 87 is a residuary item which is related to all other articles not otherwise specified.

2. In September 1959, the Petitioners submitted to the 2nd Respondent R Bill of Entry in respect of 363 cases of such magnetite electrodes imported by the Petitioners from Sweden of the total assessable value of Rs. 3,96.927/-. In respect of this consignment the authorities took up the contention that the said magnetite electrodes fall within Item No. 87, viz., the residuary Articles and was liable to a duty of 60 per cent and was not an item which fall within Item Nos. 72(c) or 72(3) and only liable to a duty of 27 1/2 per cent. However, the same was allowed to be removed from the Customs on the Petitioners giving a Bank Guarantee in the sum of Rs. 1,29,002/- at 27 1/2 per cent ad valorem and 60 per cent duty chargeable under Item No. 87. It appears that thereafter discussions took place between the Petitioners'' representatives and the 2nd Respondent wherein it was contended by the Petitioners that it was either Item No. 72(c) or 72(3) which applied and not the residuary Item No. 87. Thereafter on 9th January 1970, the Petitioners received from the 2nd Respondent a letter dated 3rd December 1969, in which it was stated without giving any reasons whatever that the magnetite electrodes imported by the Petitioners were correctly classified under Item No. 87, and chargeable to duty accordingly. The Petitioners thereafter addressed to the 2nd Respondent a letter dated 13th January 1970, stating that the Petitioners desired to file an Appeal to the Appellate authorities and also requested for a personal hearing in order to further explain and elucidate the various statements and contentions of the Petitioners. The 2nd Respondent rejected these contentions for a personal hearing and called upon the Petitioners to pay the duty as demanded before filing the Appeal. It is from this Order dated 3rd December 1969, that the Petitioners have filed this Petition under Article 226 of the Constitution for a Writ of Mandamus to quash the said Order,

3. One of the contentions in the Petition is that this Order dated 3rd December 1969, in a non-speaking Order in which no reasons whatsoever have been given by the 2nd Respondent for classifying Magnetite electrodes without copper coating under item No. 87 and that the failure to assign any reason for such decision is contrary to law. Mr. Sorabjee on behalf of the Petitioners cited several decisions including the

decision of the Supreme Court in Travancore Rayon Ltd. Vs. Union of India (UOI), , and relied upon the observations of the Supreme Court at pages 865 and 866, paragraph 11:

In this case the communication from the Central Government gave no reasons in support of the Order, the appellant Company is merely intimated thereby that the Government of India did n t see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds; that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.
It is his contention that where a judicial power is exercised by the authority normally performing executive or administrative functions, reasons should be disclosed because the party aggrieved in such a proceeding would be able to demonstrate the fallacy of the reasoning of the authority and in any event if there is an obligation to record reasons it would operate as a deterrent against possible arbitrary action for the executive authorities invested with judicial power.

4. Mr. Chagla on behalf of the Respondents does not quarrel with this position of law but what he contends is this that the Petitioners have made no grievance in regard to the non-giving of reasons by the 2nd Respondent. He contended that in fact the Petitioners were fully aware of the reasons which weighed with the 2nd Respondent and further states that the Petitioners intended to file an appeal from the said non-speaking Order dated 3rd December 1969, without such reasons but did not do to as they were compelled to deposit the amount of duty before filing of the appeal. In my view, this contention of Mr. Chagla cannot be accepted for the simple reason that as there is an obligation cast upon the authority to give reasons. It is immaterial whether the Petitioners were otherwise aware of the reasons which motivated the mind of the authority to come to its conclusion. In the present case, it is an admitted fact that no reasons whatever have been given in the Order dated 3rd December 1969. In view of the above Supreme Court Judgment just quoted there is an obligation cast on the 2nd Respondent to give reasons for coming to his

conclusion and therefore in my view the Order has to be set aside on this ground alone. I, therefore, set aside the Order dated 3rd December 1969, with a direction that the matter be heard de now after giving appropriate opportunity to the Petitioners to show cause and direct the authority concerned to pass any appropriate Order that it deems fit after giving reasons and in accordance with law.

5. In the result, the Petition is therefore, allowed and the Rule made absolute. As stated above, there will be no order as to the costs of this Petition.