

(1988) 04 BOM CK 0065

Bombay High Court

Case No: Writ Petition No. 576 of 1982

Antifriction Bearings Corp. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 6, 1988

Citation: (1988) 16 ECR 443 : (1988) 36 ELT 243

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

Bench: Single Bench

Judgement

1. The petitioners are a limited company engaged in the manufacture of products known as roller bearings. They are more popularly known as "Single Row Tapered Roller Bearings". In the manufacture of the said products they are required to use rings of various sizes. Since they have to import the same, they are importing them under an import licence issued by the Joint Chief Controller of Imports and Exports. It has been mentioned in the petition that they are importing the same in a rough form and that is why they are known as rough forged rings, which are made ready for being in the products manufactured by the petitioners by subjecting the same to several processes such as turning, stamping, heating, grinding and super finishing.

2. According to the petitioners, the said item, namely rough forged rings, fall under Tariff Item No. 73.15(1) whereas the department has contended that it falls under Tariff Item No. 84.62(3). This dispute was agitated earlier and the department's view was challenged by the petitioners in two appeals, being Appeal Nos. 3401 and 3765, both of 1981. In the orders passed disposing of the said two appeals, the petitioners' view has been upheld by the appellate authority. Despite this, the second respondent in this petition, namely the Assistant Collector of Customs, Bombay, assessed under the same Tariff Item, namely No. 84.62(3) similar rough forged rings imported by the petitioners in February, 1982. It is this decision of the respondents that is the subject-matter of this petition under Article 226 of the Constitution of India.

3. It has been urged by Mr. Korde, the learned Advocate appearing in support of the petition, that the support of the petition, that the second respondent was totally wrong in assessing the item involved in this petition under Tariff Item No. 84.62(3) when in respect of the same items the appellate authority, by over-ruling the view once taken by the Assistant Collector of Customs, has held that they are liable to import duty under Tariff Item No. 73.15(1). That this is so has not been denied on behalf of the respondents. There is no return filed to this petition on which rule was issued as early as in 1982. Mr. Deodhar who appears for the respondents has no answer to this position for obvious reasons. It is not open to an officer like an Assistant Collector of Customs to take a view which is in defiance of the view taken by an officer who is superior to him.

4. It has also been brought to my notice by Mr. Korde that the respondents in fact preferred two appeals, being Appeal Nos. CD(SB)(T)571 and 571A/82(B), to the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, which were dismissed by a majority judgment of the Tribunal. As far as the petitioners and the present products are concerned, the view that the products in question fall under Tariff Item No. 73.15(1) has become final. The authorities under the Customs Act cannot take any contrary view.

5. The petition, therefore, succeeds. Rule is made absolute in terms of prayer clauses (a) and (b).

6. Respondent No. 2 shall pay the costs of this petition to the petitioners.