

(1995) 06 BOM CK 0066**Bombay High Court****Case No:** Writ Petition No. 593 of 1987

Dai-ichi Karkaria Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: June 27, 1995**Acts Referred:**

- Customs Act, 1962 - Section 15, 25, 3

Citation: (1995) 60 ECR 396 : (1995) 80 ELT 24**Hon'ble Judges:** S.H. Kapadia, J; M.L. Pendse, J**Bench:** Division Bench

Judgement

S.H. Kapadia, J.

By this petition, the petitioners seek a declaration that the petitioner No. 1 Company is not liable to pay any customs duty or additional duty of customs for the imported material cleared between December 30, 1986 and January 21, 1987. The company also seeks a declaration that they are entitled to clear the material imported prior to December 30, 1986 and lying in bond without payment of any customs duty or additional duty of customs. The facts briefly are as follows :-

The petitioner No. 1 Company is *infer alia* engaged in the manufacture of speciality chemicals used in oil industry in connection with oil exploration viz. Flow Improver under the trade name "Daitrolite". In respect of the said chemical, respondent No. 1 from time to time offered diverse incentives to promote exports from the country. However, in September 1982 new Policy was introduced by Union of India and the incentives of duty free imports were also extended to deemed exports viz. supplies of diverse products by Indian manufacturer to projects financed by International Development Association or International Bank for Reconstruction and Development or bilateral or multilateral aided projects. Under the said new Policy, manufacturers who supplied goods on deemed exports basis also became eligible to import material free of duty for use in the manufacture of products supplied by such manufacturers as deemed exports. A public notice came to be issued on

September 8, 1982 in that regard and express directions were issued for supplies to be made for aforesaid projects by indigenous manufacturers and for issue of special imprest licences, subject to fulfilment of certain prescribed conditions, were to be issued. The Government of India, in exercise of powers conferred u/s 25(1) of the Customs Act and in public interest, by Notification No. 210/82 dated September 10, 1982 exempted from payment of customs duty and additional duty of customs all raw materials and components imported for manufacture of goods to be supplied to various organisations mentioned therein. The said Notification specifically stated that it would be valid and in force and effect upto September 10, 1987. Pursuant to the said Notification dated September 10, 1982, full exemption came to be extended. In 1983 by an amendment to the said Notification No. 210/82, Oil and Natural Gas Commission was also included as one of the organisation mentioned in the Notification dated September 10, 1982. Accordingly, public notice was also issued on September 20, 1983 amending the Import Policy for 1983-84 whereby supplies to O.N.G.C. were also qualified as deemed exports. Under the said Notification, public notice came to be issued qualifying O.N.G.C.'s supplies as deemed exports with consequential benefits of duty free imports being available to Indian suppliers. It is the case of the petitioners that pursuant to the above Notification bearing No. 210/82 as amended and in view of the promises/representations/assurances made by the Government, petitioners entered into contracts with O.N.G.C. on September 9, 1986 for sale and supply of the above mentioned chemicals on the basis of duty free imports of the raw materials. For the import of the raw materials and for the manufacture of speciality chemicals to be supplied to the ONGC, the petitioner No. 1 Company applied and the respondent No. 1 acting upon the said representation, issued import licences under the Duty Exemption Scheme. The petitioners thereafter imported raw materials from time to time. In the present case, we are concerned with the goods being imported during the period December 30, 1986 upto January 21, 1987 during which period the goods were cleared without payment of customs duty as shown in Exh."E" to the petition. Similarly, statements showing raw materials imported prior to December 30, 1986 and stored in bond, imported material expected during the period February 1987 upto April 1987 and unutilised value of special imprest licences are annexed as Exhs."F", "G" and "H" respectively to the petition. The above exhibits are relevant in view of the fact that on January 27, 1987 petitioners filed three bills of entry for home consumption in respect of 92.2 Mts. of the raw materials stored in bonded warehouses. The respondents refused clearance of the said goods unless the petitioners paid duty at 25% ad valorem in view of above Notification No. 513/86 dated December 30, 1986 which is one of the impugned Notifications. Being aggrieved by the above impugned Notifications all dated December 30, 1986 by which full exemption with regard to payment of customs duty came to be partly withdrawn, the present writ petition has been filed.

2. Shri Bharucha, learned counsel appearing on behalf of the petitioners, firstly contended that in the present case goods were imported and stored in bond even prior to December 30, 1986. This was pursuant to Notification No. 210/82 under which full exemption was granted from payment of customs duty for five years i.e. upto September 10, 1987 and since the goods were fully exempted when they entered into territorial waters of India prior to September 30, 1986, there was no question of the Company being asked to pay customs duty at 25% ad valorem. Shri Bharucha contended that the rate at which imports are chargeable to customs duty ought to be determined u/s 15 of the Customs Act provided such imports are not wholly exempted when the goods entered into territorial waters of India. Shri Bharucha contended that in the present case the goods entered into territorial waters of India prior to December 30, 1986 and therefore the impugned Notification Nos. 517/86 and 513/86, dated December 30, 1986 were not applicable. Shri Bharucha placed heavy reliance in support of his contention on the judgment of the full Bench of this Court in the case of Apar Private Ltd. and others Vs. Union of India and others, . We do not find any merit in the said contention. As stated hereinabove, full exemption was granted to the petitioners vide Notification No. 210/82 which was valid for five years. The subsequent Notification No. 517/86 expressly amended the Notification No. 210/82 and by reason of the said amendment, supply to O.N.G.C. has been expressly removed from the Notification No. 210/82. This Notification No. 517/86 is thereafter followed by Notification No. 513/86, also dated December 30, 1986 which indicates that in respect of goods supplied to O.N.G.C., the importer is required to pay duty at the rate of 25% ad valorem and full exemption with regard to additional duty u/s 3 of the Customs Act. In the above circumstances, the facts of the present case indicate that the ratio of the judgment of the Full Bench of this Court in the case of Apart Pvt. Ltd. and Others v. Union of India and Others (supra) has no application to the facts of the present case. We also do not find any merit in the contention of Shri Bharucha that in the present case exemption was project based and not goods related exemption as generally is the case. In this connection, it was contended that the Notification No. 210/82 granted exemption to import of raw material used for manufacture of chemicals to be supplied to projects financed by IBRD/IDA or to goods to be supplied to O.N.G.C. /Oil India etc. The public interest was to encourage manufacture of goods indigenously for effecting supplies to essential Indian enterprises as a part of the Scheme which was Project Based. In this connection, it was contended that since exemption under the said Notification No. 210/82 was a part of Project Based Exemption Scheme, the judgment of the Supreme Court in Kasinka Trading and another, etc. etc. Vs. Union of India and another, has no application. We do not find any merit in the above contention. In Kasinka Trading (supra) the Apex Court has laid down that the power to exempt flows from Section 25 of the Act, that just as the Notification is issued granting exemption in public interest, it can also be modified or withdrawn in public interest. In our view, whether exemption is project based or specific goods related does not make any difference. Moreover, by impugned Notification No. 517/86, exemption to

goods supplied to O.N.G.C. stood revoked by amendment of Notification No. 210/82. In the circumstances, the judgment of the Supreme Court in Kasinka Trading (supra) would squarely apply. In the present case, Notification No. 210/82 was issued in public interest. By impugned Notifications, it is modified in public interest. Therefore, the judgment in Kasinka (supra) is applicable to the present case.

3. For the above reasons, there is no merit in the Writ Petition. Writ Petition fails and rule is discharged. Petitioners are directed to make payment of duty within four weeks from today. In default of payment of duty, the respondents would be entitled to enforce the bank guarantee. In the circumstances, there will be no order as to costs.