

Coromondal Fertilisers Ltd.

Vs

Collector of Customs, Madras

Civil Appeal No. 3330 of 1984

(CJI P. N. Bhagwati, V. Khalid, M. M. Dutt JJ)

22.07.1986

JUDGMENT

DUTT, J. –

1. This appeal has been preferred by the appellant, Coromondal Fertilisers Limited, under Section 130-E(b) of the Customs Act, 1962 and is directed against the order dated April 11, 1984 of the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi, hereinafter referred to as 'the Appellate Tribunal'. By the said order the Appellate Tribunal affirmed the order dated July 1, 1982 of the Collector of Customs (Appeals), Madras upholding the order of the Assistant Collector of Customs dated February 20, 1980, confirming the demand for Rs 60,34,419.56 raised on the appellant.

2. The appellant carries on the business of manufacture of chemical fertilisers and, for that purpose, the appellant requires Mono-Ammonium Phosphate which, it is said, is not manufactured in India. At the material time an importer of Mono-Ammonium Phosphate was liable to pay customs duty as per sub-item 3 of Item 31.02/05 of the First Schedule to the Customs Tariff Act, 1975. The rate of duty that was applicable to Mono-Ammonium Phosphate was 60 per cent ad valorem. In addition, an auxiliary duty at the rate of 15 per cent ad valorem was also applicable at the relevant time.

3. The Central Government issued a Notification No. 178/76-Cus dated August 2, 1976 as follows :

G.S.R. 547(E) - In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts Ammonium Phosphate falling within Chapter 31 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for use as manure, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule :

Provided that in respect of any consignment of ammonium phosphate imported under cover of a claim for exemption from duty in pursuance of the provision hereof, the importer shall execute a bond in such form as may be prescribed by the Assistant Collector of Customs, binding himself, in sum equal to the amount of duty ordinarily leviable on such articles, to pay on demand the duty leviable on such quantity thereof as is not proved to the satisfaction of the Assistant Collector of Customs to have been used as manure.

4. It appears from Notification No. 178/76-Cus that the whole of the duty of customs leviable on

Ammonium Phosphate was exempted when the same was imported into India for use as manure. Pursuant to the exemption, the rate of auxiliary duty of customs was reduced to 50 per cent ad valorem.

5. On May 14, 1975, the appellant wrote a letter to the Deputy Collector of Customs informing him that the appellant had to urgently import 5000 mt to 6000 mt of Mono-Ammonium Phosphate for use as a raw material for the production of complex fertilisers. In the said letter, it was also stated by the appellant that according to its understanding of the Customs Tariff Act and the said Notification No. 178/76-Cus dated August 2, 1976, Mono-Ammonium Phosphate used in the production of complex fertilisers, which in turn could be used as manure, was exempt from the basic customs duty as well as auxiliary duty. The appellant requested the Deputy Collector of Customs to confirm the said understanding of the appellant at an early date. The said letter of the appellant was replied to by the Assistant Collector of Customs, Visakhapatnam, by his letter dated May 19, 1979, in which it was stated, inter alia, that under the said Notification No. 178/76-Cus dated August 2, 1976, only customs duty was exempted, provided a bond in the prescribed form was executed to the effect that the goods were for use as manure. It may be stated that there is nothing in the said letter of the Assistant Collector of Customs confirming the said understanding of the appellant that Mono-Ammonium Phosphate used in the production of complex fertilisers was exempt from the basic customs duty as well as auxiliary duty. In effect, the Assistant Collector of Customs only reiterated the purport of the Notification.

6. Be that as it may, the appellant imported a consignment of about 5000 mt of Mono-Ammonium Phosphate at the port of Visakhapatnam and submitted a bill of entry for clearance of the goods. At first the clearance was disallowed, but ultimately the Assistant Collector of Customs, Visakhapatnam, allowed clearance of the consignment on payment of auxiliary duty at 5 per cent ad valorem and additional (countervailing) duty at 7.5 per cent ad valorem and on the execution by the appellant of a bond thereby undertaking, inter alia, to produce before the property officer within three months from that date a clarification from the Ministry of Finance to the effect that the Notification No. 178/76-Cus would also be applicable to the consignment imported for use as an intermediate in the production of complex fertilisers which would be used as manure. In the event of failure to comply with the conditions of the bond, the appellant undertook to pay the differential amount of duty.

7. On August 11, 1979, the appellant wrote a letter to the Ministry of Finance, Government of India, seeking extension of the benefit of the Notification No. 178/76-Cus to the consignment in question. No reply to the said letter was received by the appellant from the Ministry.

8. In the meantime, the Assistant Collector of Customs, Visakhapatnam, issued a notice dated November 19, 1979 to the appellant calling upon it to show cause why duty amounting to Rs 60,34,419.56, which was short levied, should not be recovered from the appellant. The Assistant Collector of Customs by his order dated February 20, 1980 confirmed the notice of demand. Being aggrieved by the said order of the Assistant Collector of Customs, the appellant preferred an appeal to Collector of Customs, which was, however, dismissed. A further appeal was preferred by the appellant to the Appellate Tribunal which, as stated already, affirmed the order of the Collector of Customs and dismissed the appeal. Hence this appeal.

9. It is not disputed by the appellant that it imported the consignment of Mono-Ammonium Phosphate for the purpose of manufacturing complex fertilisers by mixing Mono-Ammonium Phosphate with Urea and muriate of Potash. It is submitted by Mr Nariman, learned counsel

appearing on behalf of the appellant, that as the appellant has used Mono-Ammonium Phosphate as a manure, not directly, but along with Urea and muriate of Potash, the appellant is entitled to the benefit of the Notification No. 178/76-Cus. Counsel submits that the notification does not require that in order to get the exemption, Mono-Ammonium Phosphate should be used directly as a manure. It is contended that as in the mixture Mono-Ammonium Phosphate is also present and the mixture is used as a manure, it must be said that Mono-Ammonium Phosphate has been used as a manure and, as such, is exempt from payment of customs duty thereon under the notification.

10. On the other hand, it is contended by the learned Attorney-General, appearing on behalf of the Collector of Customs, Madras, that as Mono-Ammonium Phosphate was not used by the appellant directly as a manure, but the same was used for the production of complex fertilisers, the notification is not applicable. In support of his contention that import of Mono-Ammonium Phosphate for the purpose of production of complex fertilisers was not exempt from Customs Duty under the Notification No. 178/76-Cus he drew our attention to another Notification No. 177/76-Cus which was issued on the same day the Notification No. 178/76-Cus was issued, that is, on August 2, 1976. The Notification No. 177/76-Cus dated August 2, 1976 reads as follows :

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -

(a) Di-Ammonium Phosphate having the specifications mentioned in Part A of the Table below and imported by the Central Government for use as manure or in the production of complex fertilisers; and

(b) Ammonium Nitro-Phosphate having the specifications mentioned in Part B of the said Table and imported by the Central Government for use as manure, from payment of the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) :

Provided that an undertaking is given, at the time of importation of Di-Ammonium Phosphate for production of complex fertilisers, agreeing to pay, on demand, in respect of such quantity of Di-Ammonium Phosphate as is not proved to the satisfaction of the Assistant Collector of Customs to have since been used for the said purpose, an amount equal to the duty of customs leviable thereon under the said First Schedule on such quantity, but for this exemption.

11. It appears from the above Notification No. 177/76-Cus that Di-Ammonium Phosphate when imported into India for use as manure or in the production of complex fertilisers would be exempt from payment of customs duty leviable thereon. In the same notification, Ammonium Nitro-Phosphate would be exempt from the payment of customs duty when imported for use as manure. It is submitted by the learned Attorney-General that it is clear from this notification that while in the case of Di-Ammonium Phosphate, it will be exempt from payment of customs duty whether it is imported for use as manure or for the production of complex fertilisers, in the case of Ammonium Nitro-Phosphate, payment of customs duty will be exempt, if it is imported only for the use of the same as manure and not for the production of complex fertilisers. It is, accordingly, contended by the learned Attorney-General that as in the Notification No. 178/76-Cus with which we are concerned, the words "or in the production of complex fertilisers" are absent, the intention of the government was that the exemption would be available, if Mono-Ammonium Phosphate was

imported only for use as manure and not for the production of complex fertilisers. It is urged that as admittedly, the appellant had imported Mono-Ammonium Phosphate and actually used the same for the production of complex fertilisers, the appellant is not entitled to the benefit of the exemption of customs duty under the notification.

12. We are afraid, we are not to ascertain the intention of the government by a comparison of the expressions used in the two different notifications. Notification No. 178/76-Cus has been couched in clear and unambiguous language. The question is not whether for getting the benefit of exemption under the notification the appellant has used it for the production of complex fertilisers or not, but the question is whether the appellant has imported Mono-Ammonium Phosphate for use as manure. It is the case of the appellant that it has used the chemical as manure, though not directly, yet along with the mixture of Urea and muriate of Potash. It is submitted on behalf of the appellant that the mixture, is undoubtedly a fertiliser and Mono-Ammonium Phosphate being one of the components of the mixture it must be held that the same was imported into India and also used as a manure or fertiliser. In our opinion, if Mono-Ammonium Phosphate retains its physical and chemical properties in the mixture, it will be difficult to say that it was not used by the appellant as a manure within the meaning of the Notification No. 178/76-Cus.

13. The learned Attorney-General has, however, made an endeavour before us to prove that the mixture of Mono-Ammonium Phosphate, Urea and muriate of Potash is not a physical or mechanical mixture, but when these three chemicals are mixed together, a complex fertiliser, which is a new chemical compound, comes into existence. The chemical compound of the complex fertiliser is known as NPK in which the percentages of nitrogen, phosphorus and potassium are different from the percentages of these elements in Mono-Ammonium Phosphate. Moreover, the complex fertiliser is granular in form whereas Mono-Ammonium Phosphate is a powder. It is submitted that in the new compound or the complex fertiliser (NPK), Mono-Ammonium Phosphate loses its physical and chemical properties or characteristics. Accordingly, it is submitted by the learned Attorney-General that as Mono-Ammonium Phosphate is lost in the chemical compound that is produced, it cannot be said that it has been imported into India for the use of the same as a manure and, as such, it is exempt from payment of customs duty under the Notification.

14. The point that by virtue of the mixture a new chemical compound comes into existence has not been taken in any of the Tribunals below. Indeed, it has been taken for the first time before us in argument. There can be no doubt that if by mixing Mono-Ammonium Phosphate with Urea and muriate of Potash, a new substance comes into existence and Mono-Ammonium Phosphate loses its identity, the appellant will not be entitled to the benefit of the Notification No. 178/76-Cus for, in that case, the import could not be for use as manure. It would, however, not be proper on our part to adjudicate upon the point. The appellant did not get any opportunity to controvert the proposition that a new compound or substance comes into existence and Mono-Ammonium Phosphate does not retain its physical and chemical properties in the mixture. In circumstances, we feel that the point should be adjudicated upon by the Appellate Tribunal after giving the parties an opportunity of placing materials in support of their respective contentions.

15. Before we part with this case, we would like to record our finding that the Notification No. 164 of 1980 dated August 19, 1980 was not issued in clarification of the Notification No. 178/76-Cus dated August 2, 1976, with which we are concerned, for, as rightly contended by the learned Attorney-General, the former was issued in supersession of the latter.

16. Some decisions were relied upon by both parties in support of their respective contentions but

we do not think that, in view of the order which we propose to pass, it is necessary to refer to the said decisions.

17. For the reasons aforesaid, we set aside the impugned order of the Appellate Tribunal and send the case back to it with a direction to decide whether or not in the process of manufacture of complex fertilisers by the mixture of Mono-Ammonium Phosphate, Urea and muriate of Potash, a new chemical compound comes into existence or, in other words, whether Mono-Ammonium Phosphate loses its physical and chemical properties in the complex fertiliser which is ultimately produced. The Appellate Tribunal will decide the question after giving the parties an opportunity of producing materials in support of their respective contentions and after giving them an opportunity of being heard.

18. We make it clear that the Central Government will be at liberty to issue a clarification to the effect that Notification No. 178/76-Cus was applicable to the consignment imported by the appellant for use as an intermediate in the production of complex fertilisers which would be used as manure in terms of paragraphs 4 of the bond.

19. The appeal is disposed of as above.

20. There will, however, be no order as to costs.

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