Collector of Customs, Bangalore and Another

Vs

M/s. Hansur Plywood Works and Another

Civil Appeal Nos. 3820-24 of 1988

(S Ranganathan, Kuldip SinghJJ)

26.10.1989

JUDGMENT

RANGANATHAN, J. –

1. These are appeals under Section 130-E(b) of the Customs Act from an order passed by the Customs, Excise and Gold Appellate Tribunal dismissing the appeals preferred by the Collector of Customs in the cases of M/s. Hunsur Plywood Pvt. Ltd. and M/s. Veneer Mills. The question raised involves the interpretation of Notification Nos. 59/83 and 126/84. These notifications are identically worded in all material respects with Notifications No. 265/Cus. dated December 8, 1982 and the question before us is directly governed by our judgment of even date in Collector of Customs v. Western India Plywood Manufacturing Co. Ltd (1989 Supp (2) SCC 515). For the reasons set out in detail in the said judgment these appeals have to be allowed and the orders of the Assistant Collector rejecting the claims filed by the respondents have to be upheld.

2. When these matters were taken up, Shri V. Sridharan, appearing on behalf of the assessee-respondents, drew our attention to Section 5 of the Customs Tariff Act. He contended that exemptions or concessions in respect of goods imported from certain countries are generally granted in pursuance of the agreements entered into with those countries, that the expression "country of origin" has a special meaning and its determination governed by special provisions and that, in view of this, the explanation to the notification in question has to be confined in its application only to a comparison of the rates applicable under notifications of concession to goods imported from certain "countries of origin". In this case, though there are four different notifications, one each in respect of Burma, Nepal, Bangladesh and Bhutan, they are all notifications of complete exemption and the rate of auxiliary duty by reference to any one of them will according to the assessee, be the smaller rate mentioned in the relevant notification under consideration. The rate of basic duty in respect of other countries is 60 per cent as there is no notification of exemption or concession in relation thereto. The argument is that the last of these should be ignored and the basic auxiliary duty determined only by reference to the rates prescribed in the four notifications of exemption. For the reasons set out in the judgment in the case of Western India Plywood Manufacturing Co. Ltd. (1989 Supp (2) SCC 515) we are unable to accept this contention.

3. We are unable to agree with the learned counsel that the interpretation given by us will be inconsistent with the agreement for concessional treatment that may have been entered into between the Government of India and the countries from which the goods in question are imported. In the first place, there is no material in the case before us to show that the notification under Section 25 was issued in pursuance of an agreement under Section 5 of the Customs Tariff Act. That apart, if this argument were sound, the auxiliary duty, in a case where imports from different countries

attract different degree of exemption under different notifications, should be determinable separately by reference to the effective basic duty notified in respect of each such country. But admittedly, if there are different rates of effective duty notified for goods imported from different countries of origin, then, notwithstanding the agreement with each of these countries, the auxiliary duty under the notification now under consideration will not be determined, in respect of the import from each of such countries, by reference to the effective basic duty leviable in respect thereof, by will be determined with reference to the highest of the effective rates of duty applicable to all the imports. If that be so, there is no reason why the position cannot be the same in a case like the present where the imports come from two sets of countries the imports from which attract two different effective basic rates of duty, although the difference arises because in respect of one set of countries there is no notification of concession while in relation to the other there is complete exemption granted under a notification. As we have pointed out, there is nothing in the language of the explanation that excluded such a case from its purview.

4. Considering the language of the notification before us, as we have explained in the case of Western India Plywood Manufacturing Co. Ltd. (1989 Supp (2) SCC 515), the result of reading the First Schedule along with the relevant notifications is that imports of timber into India from most countries is charged to effective basic customs duty as per the tariff in the Schedule whereas in respect of imports from Burma, Nepal, Bhutan and Bangladesh, the rate of effective basic duty is nil. The position, therefore, is that the article in question is liable to two or more different rates of effective basic duty based on the country of origin for the import. It, therefore, follows that the auxiliary duty is to be determined with reference to the higher of the two effective rates of duty.

5. We, therefore, see no reason to reach a different conclusion in the present case from that arrived at by us in the case of Western India Plywood Manufacturing Co. Ltd. (1989 Supp (2) SCC 515), We, therefore, allow the appeals and restore the orders of the Assistant Collector rejecting the claims of refund filed by the assessee. The appeals are allowed but there will be no order as to costs.

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