Collector of Customs, Bangalore

Vs

M/s. Western India Plywood Manufacturing Co. Ltd. and Another

Civil Appeal No. 2644-2648 of 1987

(S. Natrajan, Kuldip Singh JJ)

26.10.1989

JUDGMENT

RANGANATHAN, J –

1. These are four appeals by the Collector of Customs in the cases of M/s Western India Plywood Mfg. Co. Ltd. and Kanara Wood & Plywood Industries Ltd. (hereinafter referred to as 'the assessee'). A very short common point is involved in these appeals.

2. The assessee imported logs of timber from Burma. Under the Customs Tariff Act, 1975, timber is chargeable to customs duty at 60 per cent. (This we shall call the basic customs duty.) The relevant entry in the Schedule to the Customs Tariff Act is under heading No. 44.01 which includes "wood and timber".

3. The government had, however, issued a notification under Section 25(1) of the Customs Act exempting timber imported from certain countries of which Burma is one. The result was that the basic customs duty payable by the assessee in respect of its imports - we shall call this the effective basic duty - was nil. The assessee, however, was liable to pay an additional duty of customs in respect of its imports. This additional duty may be referred to as the auxiliary duty of customs. The levy of this duty is governed by the terms of Notification No. 265 dated December 8, 1982 and its successor Notification No. 59 of 1983 and No. 126 of 1984. The last of these reads as follows :

> # TABLESL. No. Description of goods Rate(1) (2) (3)1. Goods in respect of which the rate 40 per cent of the of duty of customs specified in the the goods as determined in said First Schedule, read with any accordance with the provi- relevant notification of the Gover- sions of Section 14 of the nment of India for the time being Customs Act, 1962 (52 of in force is 60 per cent ad valorem 1962). or more.2. Goods in respect of which the rate 30 per cent of the value of of duty of customs specified in the goods as determined in said First Schedule, read with any accordance with the provi- relevant notification of the Govern- sions of Section 14 of the ment of India for the time being in Customs Act, 1962(52 of force is nil or less than 60 per 1962). cent ad valorem.##

Explanation : For the purpose of Sl. Nos. 1 and 2 in the above Table, the expression "the rate of duty of customs specified in the said First Schedule, read with any relevant notification of the Government of India for the time being in force", in relation to any article liable to two or more different rates of duty by reason of the country of origin of that article, means that rate of duty which is the highest of those rates.

These percentages are 30 per cent and 20 per cent in the notification of 1982 and 35 per cent and 25 per cent in the notification of 1983. The terms of the notifications are otherwise identical.

4. The assessee cleared the goods by paying an auxiliary duty at 40 per cent. Subsequently, however, the assessee seems to have felt that its case falls under Sl. No. 2 of the above notification and that it should have paid an auxiliary duty of only 30 per cent and not 40 per cent. It, therefore, applied to the respondent for a refund of the excess duty allegedly paid by it. This claim was rejected by the Assistant Collector. However, on appeal, the Collector of Customs (Appeals) held that the assessee was entitled to the refund claimed and this order has also been confirmed by the Central Excise and Gold Control (Appellate) Tribunal (CEGAT). The Collector of Customs has preferred these appeals.

5. The order of the Tribunal in the appeals preferred by the present respondent was a very short order in which the Tribunal followed its earlier decision in the case of M/s. Indian Plywood Company Limited, Bombay. We have been taken through the decision of the Tribunal in the said case which is reported in Indian Plywood Mfg. Co. Ltd. v. Collector of Customs ((1987) 29 ELT 559 : (1987) 12 ECC 209 (Tribunal ND)). We have, therefore, had the benefit of the full reasoning of the Tribunal for reaching its conclusion.

6. We are of opinion that the Tribunal has erred in its interpretation of the notification set out above and that the assessee's case is clearly covered by the explanation in the notification. It is true that the main part of the notification provides for an auxiliary duty at 40 per cent in cases where the effective rate of basic duty (i.e. the rates set out in the First Schedule read with any relevant notification) is 60 per cent or above and an auxiliary duty at 30 per cent in cases where such effective basic rates is nil or less than 60 per cent. If the notification had stopped here, the assessee would have been perfectly within its right to claim that the auxiliary duty payable by it would only be 30 per cent because the effective basic rate in its case is nil.

7. However, the explanation has made in inroad into this simple rule. It has provided that where there are two (or more) effective basic rates applicable in respect of any article and the differentiation in rates is attributable to the country of origin of the goods imported, then the auxiliary duty payable will be the higher of the two (or the highest of the) rates. In the present case, when timber is imported from Burma and the other countries specified in the notification or notifications under Section 25(1), the rate of basic duty is nil but if the goods are imported from other countries, the notification does not apply and a basic duty of 60 per cent would be leviable under the entry in the First Schedule. The result, therefore, is that when we read the rates specified in the First Schedule along with the relevant notifications in respect of a particular article, namely, timber, we find that the effective basic duty is leviable on it at two rates and this differentiation in rates is attributable to the country of origin in regard to the import. Hence the explanation squarely comes into operation and the assessee will have to pay auxiliary duty by reference to the higher of the two rates of the effective basic duty, namely, 60 per cent.

8. The contention on behalf of the respondent - and this is also the view taken by the Tribunal - appears to be that the explanation comes into operation only if there is more than one notification granting concession or exemption in respect of basic duty providing for different rates in respect of articles imported from different countries. We are unable to see any warrant for reading any such restriction into the terms of the explanation. As we see it, the terms of the explanation are perfectly clear. It is this : that if, in respect of any article, there are two or more effective basic duties in operation and the different is referable to the country from which the article is imported, then the highest of the effective rates will govern the levy of auxiliary duty. It does not matter whether the

difference in the rates is because the First Schedule applies in certain cases and a concession notification applies in other cases. Clearly, the use of the words "rate .... specified in the First Schedule, read with any relevant notification" does not necessarily require that there should be such a notification; they mean : "the rates specified in the First Schedule read with the relevant notification, if any". If there is no notification the rate specified in the First Schedule has obviously to be taken into account for purpose of the notification we are now concerned with. It is, therefore, not necessary that the differentiation referred to in the explanation should arise on account of the existence of more than one notification altering the basic duty set out in the Schedule.

9. Shri Ramchandran contended that the construction sought to be placed by us would lead to this anomaly that a person will have to pay an auxiliary duty even though the effective basic duty is nil. This argument is without force for two reasons. In the first place that is the direct result of the explanation and, therefore, if that is the clear intention of the statutory instrument, the anomaly cannot be helped. The second and perhaps more appropriate answer to Sri Ramchandran's contention is that the explanation is based on good reason. It will be seen that in a case of this type as well as in cases governed by more than one notification, which make a distinction in the rate of duty based on the country of origin, there will be different importers importing goods but paying basic duty at different rates. The intention of the statute could well be that while for purposes of basic duty a differentiation in rates may be justified depending upon the country of origin that consideration would be totally irrelevant in the context of auxiliary duty. In the context of auxiliary duty, it is equitable that all importers should pay the additional duty at the same rate and that they should have no advantage or disadvantage inter se. A grant of concession in the matter of auxiliary duty as well would result in widening the gulf between one importer and another and also that between such an importer and the local trader. The provision, therefore, seems to have been deliberately enacted to achieve this result which is not really an anomaly as described by Sri Ramachandran.

10. Sri Ramachandran sought to make same point on the use of the word 'article' in the notification. We do not, however, see any significance in the use of this word which has any relevance to the point at issue. The word 'article' is used because though a number of articles may be included in one item in the First Schedule, the relevant notification may not govern all of them and it may be restricted only to some out of the many articles mentioned in the Schedule. The notification and the explanation, therefore, make it clear that the auxiliary duty has to be calculated with reference to each article based on the effective basic rates of duty applicable to such article in terms of the First Schedule read with any relevant notification under Section 25.

11. For the reasons mentioned above, we are of opinion that the auxiliary duty paid by the assessee was perfectly in order and that its refund applications are not maintainable. We, therefore, set aside the order of the Tribunal and the Collector (Appeals) and restore the order of the Assistant Collector refusing refund to the assessee. The appeals are, therefore, allowed. In the circumstances of the case, we make no order as to costs.

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