

Jain Exports Pvt. Ltd. and another

Vs

Union of India and others

Civil Appeal No. 884 of 1980

(K. N. Singh, P. B. Sawant JJ)

05.01.1991

JUDGMENT

1. This appeal is directed against the order of the High Court of Delhi dismissing the appellants writ petition made under Art. 22.6 of the Constitution seeking exemption under S. 25(2) of the Customs Act on the import of caustic soda, as granted to another importer namely, the State Chemicals and Pharmaceuticals Corporation of India Ltd.

2. The State Chemicals and Pharmaceuticals Corporation imported caustic soda under the Import Licence, duty on caustic soda was payable at the rate of 92%. The Central Government granted exemption to the importer under S. 25(2) of the Act permitting it to import the caustic soda on, payment of 10% duty instead of 92%, on the ground that there was shortage of caustic soda in the market and if the full duty was paid at the rate of 92% the cost of the goods would be very high in the market which would not be in public interest. The appellant who is an importer also imported caustic soda and applied for the grant of similar concession in the payment 'of duty as granted to the State Chemicals and Pharmaceuticals Corporation, but he was not granted any exemption, thereupon he filed a writ petition before the High Court challenging the order of the Central Government granting exemption to the State Chemicals and Pharmaceuticals Corporation on the ground that the appellant was being discriminated. The High Court dismissed the writ petition. Hence this appeal.

3. There is no dispute that liquid caustic soda at the relevant period was not a canalised item and the appellant claimed that he was also entitled to the exemption in the matter of duty on the import of caustic soda as granted to the State Chemicals and Pharmaceuticals Corporation. The appellant asserted that it was being discriminated without there being any justification for the same. Apparently, there appears no justification for the differential treatment. The Union of India has not put in appearance nor any affidavit has been filed on its behalf explaining the circumstances under which a differential treatment was meted out to the appellant. During the pendency of the appeal this Court granted interim order permitting the appellant to take delivery of the goods (caustic soda) on payment of 10% duty as paid by the respondent Corporation with an undertaking not to sell the caustic soda at a rate higher than Rs. 513 2 / - per M. T. Ex-godown namely the rate at which the respondent-Corporation had sold the quantity of caustic soda imported by them. Pursuant to the interim order the appellant took delivery of the goods by paying duty at the rate of 10% and it sold the same at the aforesaid price. The appellant had also furnished Bank Guarantee to the satisfaction of the Collector of Customs, Bombay for the difference of duty between 10% and 92.5%.

4. After hearing learned counsel for the parties and having regard to the special facts and circumstances of the case we are of the opinion that the appellant is entitled to relief as nothing has been placed before us to justify the discrimination. However, without going further in the merit we

are of the opinion that since the appellant has already imported the goods at the concessional rate of the duty and has also sold the goods at a fixed price under the orders of this Court, it would not be just or fair to direct the appellant to pay the difference of the duty at this stage.

5. We think that the ends of justice would be met if the appeal is disposed of in terms of the interim order except that the appellants are discharged from the security furnished to the Collector of Customs, Bombay under the orders of this Court. We order accordingly. There will be no order as to costs.

Order accordingly.

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