

Shah Devchand & Co. and Another

Vs

Union of India and Another

with

Sterlite Cables Ltd. and Another

Vs

Union of India and Others

with

P. L. Pagri

Vs

Union of India and Others

with

Sterlite Cables Ltd. and Another

Vs

Union of India and Others

with

S. K. Metal Co. and Another

Vs

Union of India and Others

with

Hitesh Metals and Another

Vs

Union of India and Others

Writ Petition No. 1012 of 1981 with Writ Petition (C) Nos. 1657 of 1981, 7916 of 1982, 7232 of 1982, 8068 of 1982, 8390 of 1982 and Transferred Case No. 2 of 1984

(N. M. Kasliwal, K. Ramaswamy JJ)

25.07.1991

JUDGMENT

N. M. KASLIWAL, J. –

1. In all these cases the petitioners have challenged the legality, validity and the constitutionality of the customs duty, auxiliary duty and additional duty on the import of aluminium rods/ingots and the ad hoc exemption order made in favour of Metals and Minerals Trading Corporation (MMTC). The contention of the petitioners is that the notifications granting favourable treatment to MMTC are discriminatory and violative of Article 14 of the Constitution of India. In some of the cases an additional ground taken is that the duty should be charged which was applicable on the date when goods entered the territorial waters of India and not the duty which may be applicable on the date of filing of bill of lading. Both the above points are now covered by the decisions of a Constitution Bench of this Court in *M. Jhangir Bhatusha v. Union of India* [1989 Supp 2 SCC 201 : (1989) 3 SCR 356] and *Bharat Surfactants (Pvt.) Ltd. v. Union of India* [(1989) 4 SCC 21 : (1989) 3 SCR 367]. The learned counsel for the petitioners tried to distinguish *M.J. Bhatusha* case [1989 Supp 2 SCC 201 : (1989) 3 SCR 356] by referring the following observations in this case : (SCC pp. 208-09, para 14)

"It is true that the State dons the robes of a trader when it enters the field of commercial activity, and ordinarily it can claim no favoured treatment. But there may be clear and good reason for making a departure. Viewed in the background of the reasons for granting a monopoly to the State Trading Corporation, acting as an agent or nominee of the Central Government in importing the specified oils, it will be evident that policy considerations rendered it necessary to make consummation of that policy effective by imposing a concessional levy on the imports. No such concession is called for in the case of the private importers who, in any event, are merely working out contracts entered into by them with foreign sellers before December 2, 1978."

It is contended that there is no valid reason for granting favourable treatment to MMTC.

2. We see no force in the above contention. The MMTC as well as the Union of India have filed counter-affidavit in W.P. (C) No. 8390 of 1982 in which it has been stated that the MMTC on May 24, 1979 brought to the notice of the government that in view of the international market price of aluminium being very high, the CIF price of the imported aluminium would be much higher than the domestic consumer price fixed under the Aluminium Control Order, 1970 and if the Corporation imports 75,000 tonnes of aluminium in a year and sells the same within the country at the price fixed under the Aluminium Control Order, the selling price of aluminium being lower than the international price, the Corporation will be out of pocket by Rs 18 crores at the prices prevailing then even if no import duty is charged on the 75,000 tonnes of aluminium and it would be much higher if duty is charged on the same. The Corporation also pointed out that whereas the amount payable to the Corporation from the Aluminium Regulation Account to neutralise the loss would be about Rs 18 crores, the actual amount available in the said account for disbursement to the Corporation could be approximately Rs 4 crores only. Therefore, the Corporation requested the Union Government to consider the arrangements to be made to reimburse at least Rs 18 crores to the Corporation on account of the import of aluminium to be undertaken by the Corporation on the direction of the Government of India. After taking into consideration all the aspects of the matter, including the

above facts pointed out by the Corporation, the government June 23, 1979 decided to grant waiver of customs duty, counter-vailing duty and auxiliary duty on the aluminium imported by the Corporation so long as the cost, insurance and freight price of the imported metal was higher than or equal to the price of the indigenous metal inclusive of excise duty. The object behind granting such concession was to ensure that the price of aluminium was not revised upwards to compensate the Corporation for the loss suffered by it in importing aluminium at very high cost and selling it at much lower than the cost price as fixed under the Aluminium Control Order, 1970. It has been further submitted in the counter that on account of the increase in the international price of aluminium a stage was reached when it was no longer possible to equate the price of indigenous and imported metal by this mechanism. To make the metal available at a uniform sale price to the consumer irrespective of the source of supply and to compensate the loss suffered by the Corporation in importing the metal as the canalising agency and selling it at less than the cost price, the government decided to pool the prices of indigenously produced aluminium and the imported metal. As a result, an "Equalisation Amount" was included in the sale price of the indigenous metal. This amount was realised as a part of the sale price of the indigenous metal and was required to be deposited in the Aluminium Regulation Account for payment to the Corporation with a view to compensate it for the loss suffered by it in selling the metal at a price below costs.

3. We are fully satisfied that the above action taken by the Central Government was down in the larger interest of the economy of the country and in public interest. As we are taking the view that the above explanation given by the respondents have been taken in larger public interest, the decision given in M.J. Bhatusha case [1989 Supp 2 SCC 201 : (1989) 3 SCR 356] is fully applicable in these cases also.

4. In Bharat Surfactants case [(1989) 4 SCC 21 : (1989) 3 SCR 367] it has been held that the rate of duty and tariff valuation has to be determined in accordance with Section 15(1) of the Customs Act. Under Section 15(1)(a), the rate and valuation is the rate and valuation in force on the date on which the bill of entry is presented under Section 46. Thus all the contentions raised in the case in hand before us are fully covered by the above-mentioned cases decided by the Constitution Bench of this Court. In the result we find no force in any of the grounds raised in these cases and the same are dismissed with no order as to costs.

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