

M/s. M. G. Metal Industries

Vs

Government of India

Civil Appeal No. 1290 of 1986

Sri Krishna Industries

Vs

Government of India and Another

Civil Appeal Nos. 4416-20 of 1988

M/s. M. G. Metal Industries

Vs

Government of India and Another

Civil Appeal Nos. 4421-27 of 1988

M/s. Marudhar Industries

Vs

Government of India

Civil Appeal Nos. 1816-24 of 1986

M/s. Paxal Corporation

Vs

Government of India and Another

Civil Appeal Nos. 1809-15 of 1986

M/s. Mysore Press Button Industries

Vs

Government of India

Civil Appeal Nos. 2029-33 of 1986

M/s. Hospet Pen and Plastic Industries

Vs

Government of India and Others  
Civil Appeal Nos. 2034-36 of 1986

M/s. Ashok Paper Products

Vs

Government of India  
Civil Appeal Nos. 2037-39 of 1986

M/s. Bharat Industries

Vs

Government of India  
Civil Appeal Nos. 2040-45 of 1986

M/s. Mysore Metal Industries

Vs

Government of India  
Civil Appeal Nos. 2046-50 of 1986

M/s. Bhurmall Baboothmall Jain

Vs

Government of India  
Civil Appeal Nos. 2051-61 of 1986

(S. Ranganathan, V. Ramaswami II, B. P. Jeevan Reddy JJ)

11.08.1992

ORDER

1. This is a batch of appeals under the Customs Act. The question is whether the goods imported by the appellants are "strips" or "sheets". The Assistant Collector, the Collector of Customs and on revision the Central Government took the view that the imported goods were "sheets". The orders, particularly the order in revision, are reasoned orders in which detailed findings have been given as to why this conclusion was arrived at.

2. The petitioners filed writ petitions which were allowed by the learned Single Judge of the High Court. He came to the conclusion that the appellant's contention that the goods imported were "strips" should have been accepted. In some of the cases the applications for refund filed by the

appellants were out of time according to the period of limitation prescribed under the Act. However, the learned Single Judge took the view that this plea of limitation cannot stand in the way of relief being granted under Article 226 or 227 of the Constitution.

3. The Department preferred writ appeals. The Division Bench came to the conclusion that the original assessments were correctly made and in this view of the matter expressed no opinion on the point of limitation which had been decided by the learned Single Judge in favour of the appellants. These are the appeals by the assessee.

4. Learned counsel for the appellants took us through the various orders and judgments. He also referred to some literature to show that the expression "strips" and "sheets" are defined by the Indian Standards Institution (I.S.I.). According to him, since the goods ordered by him were in coil form, they are strips and not sheets. The submission was that the distinction between sheets and strips is that while strips may be in full length form or coil form, sheets cannot be in coil form at all; in other words, he says, where the goods are in coil form they cannot be called sheets at all.

5. On the other hand, Shri Subba Rao, learned counsel appearing on behalf of Union of India points out that these were imports of the period 1971-72. At that time, the orders were placed and the goods were supplied describing the commodities as "sheets" even though there was a stipulation that the goods should be in coil form. The assesseees themselves paid duty at the initial stage accepting that the goods imported were sheets. The evidence, referred to by the authorities, clearly shows that the understanding of the trade at that time was that the goods in question were sheets even though they were in the form of coils. It is submitted that the distinction now sought to be put forward on behalf of the assessee that, where the goods are supplied in the form of coils, they should be treated as strips is based on subsequently revised I.S.I. standards and should not be accepted. He pointed out that the question had to be decided depending upon the trade practice and understanding at the relevant time and this is a finding of fact. The assessee's returns were based on the assumption that they were sheets. Three Departmental Authorities concurrently held that they were sheets. The High Court, in the first instance under Article 226 of the Constitution, was not justified in interfering in a finding of fact. Luckily, this has been set aside by the Division Bench and this Court should not interfere under Article 136 of the Constitution.

6. We find considerable force in the arguments put forward on behalf of the counsel for Union of India. It is beyond doubt from the facts stated on record, in particular, contained in the judgment of the Division Bench as well as the revisional authority that the understanding at the relevant time was that the goods were sheets. The Division Bench also specifically observes that the findings of the authorities were not challenged before it. In this situation, we are of the opinion that the Division Bench was right in holding that the intervention of the High Court under Article 226 of the Constitution was not called for. We see no reason to upset this conclusion of the Division Bench under Article 136 of the Constitution. These appeals are, therefore, dismissed.

7. Learned counsel for the appellants submits that there are several other cases - of other assesseees and of these assesseees for other import consignments - in which the question whether the goods imported are sheets or strips arises, is pending at various stages and that the dismissal of the writ petition should not preclude a contention on merits in those cases. As we have already made clear, the present writ petitions are being dismissed on a narrow ground. We express no conclusion on the merits and, in other proceedings pending before them, it will be open to the authorities to apply their minds to the relevant facts and arrive at a conclusion in accordance with law.

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