

Union of India

Vs

Victory Plastic Pvt. Ltd. and Another

Civil Appeal No. 3336 of 1996

(S. C. Sen, B. P. Jeevan Reddy JJ)

13.02.1996

ORDER

1. Leave granted.

2. This appeal is preferred against the judgment of the Bombay High Court allowing the writ petition filed by the respondent. The writ petition was directed against the order of the Assistant Collector, Customs rejecting a refund application filed by the respondent.

3. The respondent had imported PVC resin which is liable to payment of duty under Tariff Item No. 39.01/06 of the First Schedule to the Customs Tariff Act, 1975. The Central Government had, however, issued an exemption notification providing that PVC resin falling under Chapter 39 when imported into India shall be exempt from the whole of the duty of customs leviable thereupon. This notification dated 15-3-1979 stated that it shall remain in operation till 31-3-1981. On 16-10-1980, however, the said notification was modified by another notification limiting the exemption to the duty in excess of forty per cent ad valorem. The respondent, it is not in dispute, opened the letters of credit only on 20-11-1980, i.e., after the issuance of the notification dated 16-10-1980. The import was much later. Even so, they contended that they should get the benefit of full exemption of duty as provided by the first notification dated 15-3-1979 and that the notification dated 16-10-1980 cannot be applied to him. This contention was rejected by the Assistant Collector but the High Court has upheld the same.

4. An identical dispute has been pronounced upon by this Court in *Kasinka Trading v. Union of India* ((1995) 1 SCC 274 : JT (1994) 7 SC 362). The said decision deals with these very notifications. Indeed, that was a case where the appellant had placed orders for the import of PVC resin before the issuance of notification dated 16-10-1980. Even so, it was held that he cannot plead promissory estoppel nor can he claim full exemption under notification dated 15-3-1979 ignoring the later notification. The case before us is a clearer one in the sense that the opening of letters of credit and the transaction was entered into after the issuance of the notification dated 16-10-1980. Following the said decision - and also having regard to the aforementioned factual position - this appeal is allowed. The judgment of the High Court is set aside.

5. No costs.