

SUPREME COURT OF INDIA

Before :- S.P. Bharucha, R.C. Lahoti and N. Santosh Hegde, JJ.

Civil Appeal No. 4149 of 1991. D.d. 14.12.1999

Indian Farmers Fertilizers Co-operative Ltd. - Appellants

Versus

Union of India - Respondents

For the Appellants :- Mr. R.P. Bhatt, Senior Advocate, Mr. M.N. Shroff, Mr. Chirag M. Shroff, Mr. Uttam Reddy, Mr. A. Ranganadhan and Mr. A.V. Rangam, Advocates.

For the Respondents :- Mr. Mukul Rohtagi, Additional Solicitor General, Mr. Hemant Sharma, Mr. B.K. Prasad, (Mr. D.S. Mehra), Advocates for Mr. P. Parmeshwaran, Advocate.

Case referred :

Collector of Customs v. Western India Plywood Manufacturing Co. Ltd., 1989(44) ELT 595

JUDGMENT

N. Santosh Hegde, J. - The appellant, who is a registered multi-unit cooperative society under the Bombay Cooperative Societies Act, filed writ petitions under Special Civil Application Nos. 94 and 472 of 1977 before the High Court of Gujarat at Ahmedabad seeking issuance of a writ of certiorari to quash and set aside the order made by the Appellate Collector of Customs, Bombay, dated 25.2.1976 confirming the order made by the Collector of Customs at Kandla dated 26.2.1975.

2. It was contended before the High Court that the appellant manufactures chemical fertilizer and other allied products in its factory at Kalol and new Kandla Port in the State of Gujarat. It is also stated that for the purpose of manufacture of chemical fertilizers, the appellant imports "phosphoric acid" for use in the manufacture of Nitrogen phosphorous potash, and by the impugned order the respondents had levied auxiliary duty of customs at the rate of 15 per cent purporting to levy the same under Clause 1 of Notification No. 14 dated 1.3.1974 issued by the Central Government in exercise of its power under Section 25(1) of the Customs Act, 1962 read with Clause 19(4) of the Finance Bill, 1974. The appellant contended before the High Court that, as a matter of fact, the phosphoric acid imported by the appellant was subjected to a levy of 5% of auxiliary duty of customs under the above Notification because the goods imported by the appellants would fall under Clause 2 of the said Notification. Since the appellant was wrongly levied higher auxiliary duty at 15 per cent, it had prayed for refund of the excess amount collected from it.

3. It is not in dispute that at the relevant time the rates at which the customs duty was to

be recovered was specified in the First and the Second Schedule of the Indian Tariff Act, 1934 which had provided for levy of duty at standard rate, preferential rate and protective rate as specified in the First Schedule. The import made by the appellant was referable to Item No. 28(16) which prescribed a standard rate and preferential rate of duty for phosphoric acid.

4. Section 19 of the Finance Act, 1974 has made a provision for levy of auxiliary duty on goods covered by the First Schedule to the Tariff Act, as amended from time to time, at 20% of the value of goods as determined in accordance with the provisions of the Customs Act, 1962. The auxiliary duty is in addition to the duties chargeable under the Act. Therefore, in exercise of the power conferred upon Section 25(1) of the Act and Section 19(4) of the Finance Act, 1974, the Central Government by Notification dated 1.3.1974 exempted the goods specified in column 2 of the Table being goods mentioned in the First Schedule to the Act, from so much of the auxiliary duty as is in excess of the rate specified in column 3 of the said Table. The relevant part of the Notification is as under :-

Sl. No.	Description of Goods	Rate of auxiliary Duty of Customs
(1)	(2)	(3)
1.	Goods in respect of which 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 is 60 per cent ad valorem or more but less than 100 per cent ad valorem.	Fifteen per cent of the goods as determined in accordance with the provisions of Section 14 of the Customs Act, 1962 (52 of 1962).
2.	Goods in respect of which the rate of duty of customs specified in the said First Schedule read with of the Govt. of India for the time being in force, is less than 60% and or nil.	Five per cent of the value of the goods as determined in accordance with the provisions of section 14 of the Customs Act, 1962 (52 of 1962)
3.	xx	xx
4.	xx	xx

Explanation : For the purposes of serial No. 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", in relation to any article liable to two or more different rate of duty, means that rate of duty which is the highest of those rates".

5. Before the High Court, it was contended on behalf of the appellant that the phosphoric acid imported by the appellant for the manufacture of fertilizer is liable to auxiliary duty Appeals dismissed.