

CALCUTTA HIGH COURT

Continental Marketing Pvt Ltd

Vs

Vs. Union of India

(Dipak Kumar Sen, J.)

30.08.1985

JUDGEMENT

Dipak Kumar Sen, J.

(1.) M/s. Continental Marketing Pvt. Ltd., the appellant No. 1, carries on business of import and export and in course of its business imported into India under valid licences 2973.6 Kgs. (59 rolls) of Polyester plastic unsupported, of the specification 12 micron x 1020 mm x 3000 meters and 10.920 Kgs. (104 rolls) of the said material of specification 25 micron x 1020 mm x 3000 meters by the vessel "Cristobal Maru" which arrived at Calcutta on or about the 23rd September, 1982.

(2.) THE Appellant No. 1 thereafter filed a bill of entry for warehousing the said goods which were landed at the Port of Calcutta. THE said goods however were not warehoused and have been lying at the Port till date. Sometime in January 1983, the Appellant No. 1 applied for release of the goods for home consumption and submitted necessary documents for calculation and levy of customs duty. The Customs Authorities assessed that basic customs duty of 100% plus auxiliary duty as also an additional duty under Section 3 of the Customs Tariff Act, 1975 read with Chapter 15A of the Central Excise, were leviable on the said goods. The Appellant No. 1 contended that under Notification No. 228/76-Cus., dated the 2nd August, 1976 as amended by Notification No. 443/76-Cus., dated the 29th November, 1976 the goods were exempt from the additional duty under the Customs Tariff Act, 1975 and sought to clear the goods on payment of customs duty only. The contentions of the Appellant No. 1 were not accepted by the Customs Authorities.

(3.) ON the 12th April, 1980 the Appellant No. 1 and Srinivas Rastagir the Financial Controller and the constituted Attorney of the Appellant No. 1, the Appellant No. 2, moved this court under Article 226 of the Constitution against the Union of India, the Collector of Customs and the Assistant Collector of Customs, Group 11, Calcutta, who were impleaded as the Respondents to the application. They are also the Respondents before us in this appeal. On the 3rd May, 1983, a

Rule nisi was issued on the writ application calling upon the Respondents to show cause why appropriate writs should not be issued and directions should not be given directing them not to levy or demand any additional duty under the Customs Tariff Act on the said goods and directing them further to release the goods after realising only the Customs duty and issue a detention certificate. An interim order was also passed as follows: "...subject to the petitioner paying usual customs duty and auxiliary duty and as regards the countervailing duty the petitioner must pay 50% of the same in cash and furnish a Bank guarantee for the remaining 50%. The Bank guarantee must be furnished within a period of six weeks from date to the satisfaction of the Collector of Customs, Calcutta. Till such Bank guarantee is furnished the petitioner shall deposit an equivalent amount in cash with their Advocate-on-record". ;