Union Of India And Others vs Kanunga Industries on 7 September, 1990

Equivalent citations: AIR1990SC2190, 1991(32)ECC81, 1990(30)ECR449(SC), JT1990(3)SC273, 1990(2)SCALE447, 1992SUPP(1)SCC35, 1990(2)UJ653(SC), AIR 1990 SUPREME COURT 2190, (1991) 32 ECC 81, 1990 UJ(SC) 2 653, 1992 CRILR(SC MAH GUJ) 220, (1990) 3 JT 723 (SC), 1992 SCC (CRI) 76, 1992 SCC (SUPP) 1 35

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Bench: P.B. Sawant, S.C. Agrawal

ORDER

P.B. Sawant, J.

1. The respondent which is a partnership firm at the material time engaged in the manufacture of stainless steel equipments and utensils with its factory at Bangalore. Under the Registered Exporters' Promotion Scheme promulgated by the Government of India and in operation at that time, an exporter of leather was entitled to a licence for importing raw material. The Scheme also provided that the exporter could nominate another person to receive the said import licence, The respondent-firm was so nominated by an exporter of leather and pursuant to this nomination, the respondent obtained an import licence dated June 7, 1969 for the import of certain raw material. In accordance with the provisions of paragraph 85 of the Import Trade Control Hand Book, 1969 which was effective from April 1969, the respondent imported stainless steel strips which landed at Madras on September 12, 1969. The import was in three consignments of the total value of Rs. 3,46,087/-. It is not necessary to refer to the intervening facts leading to the imposition of penalty of Rs. 8,48,000/- on the said three consignments. Suffice it to say that this penalty was imposed by the Central Board of Excise and Customs under Section 112(a) of the Customs Act, 1962 on the ground that the import of the stainless steel strips was unauthorised. Against the said order the respondent preferred a revision to the appellant and the appellant by its order of August 2, 1972 dismissed the same. The respondent then approached the Madras High Court by way of a writ petition under Article 226 of the Constitution. The learned Single Judge of the High Court dismissed the same. Against the said order, the respondent preferred a Letters Patent Appeal before the Division Bench of the High Court and the Division Bench allowed the appeal holding that paragraph 85, as it stood at the relevant time, did not prohibit the import of stainless steel strips. Consequently, the order imposing the penalty was quashed.

2. The only question in controversy before us is whether the provisions of said paragraph 85 prohibited the import of stainless steel strips. It is not disputed that the relevant provisions of paragraph 85, to be precise of 85(1)(i)(c) as they stood in 1967 did not allow the import of stainless steel strips of any specifications. This provision was however, modified in 1968 and the import of stainless steel sheets, plates, strips and circles of any specifications was not permitted. It may be observed from this modification made in 1968 that as against the expression "stainless steel of any specifications" which occurred in the 1967 provisions, this modification detailed the various forms of stainless steel such as sheets, etc. which included strips and stated that the import of stainless steel in these forms was prohibited. In the next year, i.e., 1969 which is relevant for our purpose, there was a further amendment to this provisions and that read as follows:

> The import of stainless steel and sheets/plates/circles, of any specifications and the import of items licensable under the import policy in force subject to production of non-availability certificates from indigenous procedures, will not be permitted under this facility.
>
> It is thus apparent that in this year what was prohibited was stainless steel and sheets, plates, circles of stainless steel. Strips were specifically omitted from this prohibition although it was specifically included in the prohibited items in 1968 and impliedly in 1967 for the expression "stainless steel of any specifications" would include every form of stainless steel. Since the strips were specifically omitted, it appears on June 26, 1969 an erratum was issued which was published on July -7, 1969 and that erratum reads as follows:
>
> The following corrections shall be deemed to have been made in the Import Trade Control Handbook of Rules and Procedure, 1969, published and Supply Public Notice No. 63/TTC (PN/69) 1st April 1969:

S No.	Page No. of Hand Book	Para No.	For Read
1.	63	85 (1)(9i)(c)	Stainless steel and sheets/plates/ circles/strips.	Stainless steel sheets/plates/

> Thus it would be clear that it is by the correction that the strips were brought within the prohibited items. There is no doubt that in the meanwhile the respondent had already contracted with the foreign parties for the import of the strips and, therefore, the goods were authorised on the date they were contracted for.

3. Mr. Krishnamurthy Iyer, however, contended that since in the earlier entry the words "stainless steel and sheets/ plates/ circles" were mentioned, it should be held that the words "stainless steel" included every form of it including the strips. This arguments wants us to take into account only the words "stainless steel" and to ignore the words "and sheets/plates/circles". If the entry contained only the words "stainless steel" it was possible to argue that stainless steel in any form - whether

strips, sheets, plates, circles, ingots, rods etc. was included in it and hence prohibited. But the entry proceeded to mention the specific forms of stainless steel. It would mean that stainless steel only in its original form whatever it may be and its specific forms enumerated therein were alone banned. It may also mean that the conjunctive "and" after the words "stainless steel" had crept in the entry inadvertently. Such a reading of the entry would be legitimate taking into account its history referred to earlier. We have pointed out that in 1967 the relevant entry was "stainless steel of any specifications" whereas in 1968 it was "stainless steel sheets/plates/strips/circles of any specifications". The erratum only brought the situation to the 1968 position. It is also for this reason that we cannot accept the contention that the erratum only made clear or explicit what was implicit in the entry earlier. This is apart from the settled legal position that taxation statutes have to be construed strictly, and the benefit of doubt, if any has to be given to the assessee.

The appeal is, therefore, dismissed. In the circumstances of the case, there will be no order as to costs.