

Supreme Court of India

Choksi Tube Company Ltd. vs Union Of India (Uoi) And Ors. on 28 January, 1997

Equivalent citations: 1998 (97) ELT 404 SC, (1997) 11 SCC 179

Author: S Bharucha

Bench: S Bharucha, F Uddin

JUDGMENT S.P. Bharucha, J.

1. Writ Petition (Civil) 1583 of 1986 -The writ petitioners imported stainless steel strips. The stainless steel strips arrived at Bombay on 6th September, 1976. They were cleared for home consumption on 16th and 30th September, 1976. They were cleared giving them the benefit of exemption from customs duty as provided by exemption Notification No. 256-Cus./76 issued under the provisions of Section 25(1) of the Customs Act, 1962. On 10th and 11th January, 1977, the writ petitioners received notices to show cause why they should not be charged duty at the unexampled rate on the ground that the width of the said strips was in excess of that permitted by the said exemption Notification.

2. On 24th February, 1977, exemption Notification No. 27/77 was issued giving an exemption from customs duty to stainless steel strips of a width exceeding 127 mm and of a thickness of 3.175 mm and above.

3. On 25th March, 1977, the petitioners wrote to the Central Board of Excise and Customs with reference to a Notification that had specially been issued in favour of M/s. Ahmedabad Advance Mills Ltd., Navsari, Bombay, who had imported identical stainless steel strips at about the same time as the petitioners. The petitioners submitted that they should be treated on a par with the said mills. The Notification that was issued in favour of the said mills was dated 19th March, 1977. It exempted in the public interest 735.787 MTs of stainless steel strips imported by the said mills from customs duty leviable thereon in the same manner as prevailed under the exemption Notification No. 256-Cus./76. The representation made by the petitioners on 25th March, 1977 was rejected on 20th May, 1978; no reason for the refusal was assigned. The petitioners also sought the benefit of the exemption Notification No. 27/77, dated 24th February, 1977 to be applied to them retrospectively. This was refused on 23rd June, 1978 on the ground that the exemption could not be issued so as to have retrospective effect. The petitioners had been pursuing the Statutory appeals provided under the Customs Act in respect of the demand made upon them for duty on 10th and 11th January, 1977 as afore-stated. Having failed before the authorities, they preferred an appeal before the Central Excise & Gold Control Tribunal. The Tribunal also indicated that, in the circumstances, no relief could be granted to them.

4. Along with the appeals that they filed against the order of the Tribunal, the petitioners filed this writ petition. They set out the facts as afore-stated and averred that the action of the Board in declining to give to them the relief that had been given in identical circumstances to the said mills was arbitrary and against the provisions of Article 14 of the Constitution. The petitioners prayed for a writ directing the respondents to consider the case of the petitioners and give to them the relief that had been given to the said mills.

5. On 10th and 11th March, 1992 this writ petition and the civil appeals were part heard before this Court. On 11th March, 1992, the Court noted that no counter affidavit had been filed to the writ petition; that, having regard to the averments in the writ petition, a counter affidavit was necessary; and that the counter affidavit should be filed within 8 weeks. No affidavit having been filed, the matter was adjourned on 30th October, 1996. On 28th November, 1996, it was adjourned again, it being made clear that this would be the last opportunity. Despite the clear terms of the order dated 11th March, 1992, no affidavit in reply to the writ petition has been filed upto-date. An affidavit has been filed in reply to the civil appeals. There too the ground of arbitrariness has been taken and the reply is that a Notification under Section 25(2) of the Customs Act is in the discretion of the Government and cannot be claimed as a matter of right.

6. We must record that with usual fairness, Mr. Mohan, learned Counsel for the respondent, has not attempted to justify the action of the respondents in not filing a counter and in not ascribing a reason for treating the said mills in a fashion different from that in which the petitioners have been treated.

7. It is not the case of the respondents that the import made by the said mills was in any way different from that made by the petitioners. There is no indication as to why the petitioners have been treated differently from the mills. Where power under Section 25(2) is exercised to grant a special exemption from payment of duty, under circumstances of an exceptional nature to be stated in such order, we would have expected the respondents to state on affidavit what it was that moved them in the public interest to grant such exemption and what was the exceptional nature of the circumstances that attached to the imports made by the said mills. Having regard to the deter mined stand of the respondents not to state their case on paper, we must assume that there was neither any public interest nor any exceptional nature involved and that others placed in circumstances similar to that in which the said mills were placed must have the same benefit as was advanced to the said mills. Accordingly, we must direct the respondents to grant to the petitioners the same benefit that was granted to the said mills by the letter dated 19th March, 1977 written by M. Jayaraman, Under Secretary to the Government of India, Department of Revenue and Banking to the Collector of Customs, Bombay on 19th March, 1977 on the subject of "Exemption from payment of Customs duty Import of 735.787 M.T. of Hot Rolled Stainless Steel Strips by the Ahmedabad Advance Mills Ltd., Bombay."

8. The petitioners had paid customs duty when the goods were cleared and that duty is the duty that would be payable having regard to our order. It shall, however, be open to the respondents to make the requisite verification and claim from the petitioners any shortfall, if any, which Mr. Salve, on behalf of the petitioners, states that the petitioners shall pay. The Bank Guarantee given by the petitioners for the differential duty amount pursuant to the orders of this Court shall now stand discharged.

9. The writ petition is allowed accordingly. There shall be no order as to costs.

10. C.A. Nos. 4165-4167 of 1986. - Having regard to the order that we have made on the writ petition, the civil appeals shall be treated as disposed of.

11. There shall be no order as to costs.