Kothari Optical Industries Vs. Union of India

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Court : Mumbai

Decided On : Jun-10-1993

Reported in : 1993LC46(Bombay); 1993(68)ELT47(Bom)

Judge : A.P. Shah and ;M.L. Pendse, JJ.

Acts : Central Excise Act - Sections 3(3)

Appeal No. : Writ Petition No. 1523 of 1983

Appellant : Kothari Optical Industries

Respondent : Union of India

Advocate for Def. : Shri K.R. Bulchandani, Adv.

Advocate for Pet/Ap. : Shri P.A. Sawant, Adv., i/b., ;M/s Gagrat & Co.

Judgement :

Pendse, J.

1. Shri Sawant, learned counsel appearing on behalf of the petitioners, very fairly stated that two out of the three questions arising in this petition stand concluded by decision of Division Bench of this Court reported in : 1987(32)ELT262(Bom)) Ashok Traders v. Union of India and Another. The only contention which survives for consideration is in respect of notification dated August 2, 1976 issued by the

Government of India under sub-section (3) of Section 3 of the Customs Tariff Act, 1975. The notification inter alia provides that the additional duty on imported articles specified in column No. 2 of the table annexed shall be equal to the excise duty for the time being leviable on the material specified on the corresponding entry in column No. 3 of the table to the extent that material is used in the manufacture of imported articles. Article set out in column No. 2 of the table is 'fabric containing more than 10 per cent by weight of synthetic fibre or yarn. 'The names of the material set out in table 3 is 'synthetic fibre and yarn'. The petitioners have imported article witch falls within column No. 2 of the table of the notification. Shri Sawant submitted that it is not permissible under Section 3(3) of the Customs Tariff Act to levy additional duty on raw materials which equivalent to duty paid on raw material in respect of synthetic fibre and yarn. Sub-section (3) of Section 3 of the Customs Tariff Act reads as follows :-

'3(3). If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counterbalance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may be notification in the Official Gazette, direct that such imported article, shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.'

Shri Sawant submitted that the sub-section provides that the imported article shall be liable to additional duty representing such portion of the excise duty leviable on such raw material and its expression clearly establishes that the duty leviable under sub-section (3) of Section 3 cannot be cent-percent but can only be portion of the duty leviable, We are unable to find any merit in the submission of the learned counsel. The ambit of sub-section (3) of Section 3 was examined by the Supreme Court in a decision reported in : 1985(20)ELT222(SC) Khandelwal Metal and Engineering Work and Another v. Union of India and Others. Chief Justice Chandrachud speaking for the Bench observed that :-

'Clause 3 provides for the levy of additional duty on an imported article to counter-balance the excise duty leviable on the like article made indigenously, or on the indigenous raw materials, components or ingredients which go into the making of the like indigenous article. This provision corresponds to Section 1A of the existing Act, and is necessary to safeguard the interest of the manufacturers in India.'

2. The idea of levying additional duty under sub-section (3) of Section 3 is to counter-balance the advantage with an imported may gain and consequently toe challenge to the notification cannot be accepted. Shri Sawant could not contend that there is any case in which the additional duty recovered under sub-section (3) is not to counter-balance but something more was recovered from the importer than what the indigenous manufacturer would pay for the raw material in India. In our judgment, the challenge to the notification is without any merit and the petition must fail.

3. Accordingly, rule is discharged with costs.