

Ashok Kumar Berival Vs. Union of India (Uoi) and ors.

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Court : Mumbai

Decided On : Sep-11-1990

Reported in : 1990(31)LC390(Bombay)

Judge : S.M. Daud, J.

Appeal No. : Writ Petition No. 2328 of 1983

Appellant : Ashok Kumar Berival

Respondent : Union of India (Uoi) and ors.

Disposition : Petition allowed

Judgement :

S.M. Daud, J.

1. This petition under Article 226 of the Constitution takes exception to the objection incorporated in query memo Ex. E vis-a-vis a consignment sought to be imported by the petitioner,

2. The petitioner had imported aluminium alloy coated steel sheets weighing about 99.785 M.Ts. of certain specifications. At that time, a query memo was issued called upon the petitioner to explain how that was permissible under the import licence which permitted import of only carbon steel sheets/strips. Petitioner submitted a reply which is at Ex. F and followed up the same with Ex. G to support

the contention that the imported article was covered by the import licence. Finding respondents unyielding, petitioner came to this Court and on the basis of the interim relief obtained an order for clearance. The respondents have not filed a return. The only surviving question now is to decide whether the objection raised in the impugned memo is untenable? I find in the affirmative for the reasons given below.

3. Carbon steel sheets coils fall under the broad category of steel sheets and this could cover steel sheets of all kinds including aluminium/aluminium alloy coated sheets. Ex. G quotes a provision of the Customs Tariff Act in which 'sheets' and 'plates' have been defined as inclusive of 'coated material' provided the same did not assume the character of an article or product falling under other headings. In the instant case the imported material cannot be classified under other headings, and therefore, the submission contained in Ex. F should have been accepted.

4. Mr. Rege submits that the import itself was impermissible in view of there being a change in the import policy at the date of importation irrespective of the position in the preceding year. That was not the ground raised for delaying clearance. If it be open to the authorities to raise this contention, they may do so at a future date. The petition is restricted to the limited ground on which clearance was withheld and that ground is set out in Ex. E. The said objection was without substance.

5. In the result the petition succeeds and it is hereby declared that Ex. E was without merit. It is made clear that the respondents will be at liberty to raise other objections in regard to import if the same be available to them under the law. Rule in these terms made absolute with parties being left to bear their own costs.