Pidilite Industries P. Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-1990

Reported in : (1990)(50)ELT577TriDel

Appellant : Pidilite Industries P. Ltd.

Respondent : Collector of Customs

Judgement :

1. These 48 appeals involve a common question relating to the rate of additional duty of customs leviable on Poly Vinyl Alcohol (PVA for short). It is the appellants' case that the Central Excise Notification No. 185/83 should be applied and the rate fixed at 10%. The Revenue on the other hand decided that the Notification cannot be applied, and the statutory rate of duty which is higher than the concessional rate should be applied. When the matters came up Shri Jayant Bhushan, the learned Advocate for the appellants requested for an adjournment of the matters on the ground that an appeal involving an identical point was pending decision in the Supreme Court who ordered to post the appeal in March 1991. The learned Advocate submitted that in all these matters duty as levied by Customs was paid and refund applications are pending.

Therefore, there is no prejudice to Revenue if the adjournment is granted. Shri Jayant Bhushan submitted that multiplicity of the appeals should be avoided and an adjournment of this matter would ensure such avoidance.Collector of Central Excise v. Narrondass Manordass Precious Metal Refinery reported in 1989 (42) ELT 739 (Tribunal) to support his plea for adjournment. In the said matter the

Tribunal acceded to the request of the respondents therein that the appeal be adjourned sine die to await the result of the appeal before the Supreme Court filed by another party. The issue involved was the same.

3. The Bench considered the request and noted that to begin with the Supreme Court fixed the date 9 months later. By the time the actual decision comes it would take some further time especially as the Honourable Supreme Court, the Apex Court of the Country, is a busy institution and If more important matters like those relating to Constitution etc. come before it those matters will normally receive priority. Therefore, acceding to the adjournment in this matter will amount to grant a sine die adjournment for all purposes. We note the submissions of the learned Advocate that the same parties are involved in the appeal before the Supreme Court. In our view even this circumstance should not lead to an adjournment of this matter as the Tribunal has not been adjourning matters merely because an appeal on the same issue is pending before the Supreme Court. The Customs Act creates a right of appeal to the party and the proper course would be to file other appeals before the Supreme Court so that all matters can be heard together. That the Revenue is not prejudiced cannot also be a ground for adjournment. If it is accepted that the pendency of an issue before the Supreme Court (not relating to the appeals before the Tribunal) is a ground for sine die adjournment, the work of this Tribunal shall come to a standstill and the consequent effects on the lower quasi-judicial bodies in Customs and Excise Departments who do then begin adjourning matters pending before the Tribunal would lead to an undesirable situation. It is not as if the Hon'ble Supreme Court has already heard the matter and orders are pending. It is not that the Court has granted a stay. We, therefore, rejected the request of the learned Advocate and proceeded to hear the matter on merits.

4. The learned Advocate referred to Section 3 of the Customs Tariff Act and pointed out that the object of the Legislation was to safeguard the interests of the local manufacturers. He argued that the PVA is manufactured from Vinyl Acetate Monomer (VAM for short). Under the Central Excise Tariff the statutory rate is 40% and the Notification No. 185/83 reduces it to 10%. The learned Advocate submitted that in India 100% of the manufacturers (whose number was stated to

be two) manufacture PVA only from VAM and pay 10% duty only. Therefore, according to the learned Advocate like articles manufactured in India pay 10% only. As a result the duty leviable on imported PVA would be 10% only for the reason that if produced in India PVA would always pay only 10%.

5. The learned Advocate submitted that the appellants did not ask the Department to extend the benefit of the Notification No. 185/83 to their imports. They were asking the Department to go by the terms of Section 3(2) of the Customs Tariff Act by which the rate applicable to the goods if manufactured in India (10%) would be applied to their imports also. The learned Advocate further submitted that Section 3(3) of the Customs Tariff Act empowered the Government to issue a Notification levying a duty on the raw materials; but no notification of this nature was issued.

6. Shri Jayant Bhushan referred to an earlier Judgment of the Tribunal reported in 1986 (24) ELT 119 Tribunal (Collector of Customs v. Parekh Dye-chem Industries P. Ltd.) and submitted that this judgment also considered a wrong issue namely the applicability of the Notification.

He argued that the word "leviable" would mean "levied" and in terms of the explanation of Section 3 there is only one rate of duty leviable in India and that is 10% and this rate should be levied as Additional Duty of Customs in the instant matters. Therefore, the learned Advocate pleaded that the earlier judgment should not be followed and as this Bench also consists of three Members, the Matter may be referred to a Larger Bench.

7. Shri Jayaraman, the learned SDR opposed the arguments and submitted that the ratio of the Tribunal's judgment in Parekh Dye-chem Industries P. Ltd. (supra) is quite clear. This judgment not having been set aside or modified it is binding. The learned representative reiterated the arguments advanced by Revenue in that matter and supported the findings therein.

8. Referring to Section 3 of Customs Tariff Act the learned representative submitted that the words "if a like article is not so produced or manufactured" appearing in Explanation (2) to Section 3, would govern to both the situations namely when a like article is not produced and when duty is leviable at different

rates. Shri Jayaraman argued that if there are different rates as is the case here (10% and 40%) the highest rate would be leviable.

9. The learned Advocate in his rejoinder agreed that the highest rate leviable would be the rate applicable, but submitted that the leviable rate was only 10% as the rate of 40% was never levied.

10. We have considered the submissions of both sides. We have perused the judgment of the Tribunal in Parekh Dye-chem Industries P. Ltd. (Parekh for short). It is true that the Tribunal examined the question of applicability of the Notification No. 185/83 in the said judgment.

But a careful reading of the judgment would show that reference to that Notification was a part of the discussion as to what is the rate of duty leviable on the PVA imported by the respondents therein. Even in the said appeal Shri Shanti Bhushan, the learned Advocate for the respondents argued that the respondents' claim was not with reference to Notification No. 185/83 but with reference to Section 3(1) of Customs Tariff Act. Therefore, it is not as if the argument advanced by Shri Jayant Bhushan now before was not advanced and considered in the Tribunal's judgment. In the said judgment there were three different orders by the three different learned Members. All the three Members agreed that the correct rate of duty leviable was not 10%. Shri Sankaran, the learned Member (Technical) held that the benefit of Notification No. 185/83 was erroneously extended to the imported consignments in the order of the Collector (Appeals). Shri Gowri Shanker Murthy, the learned Member (Judicial) held that additional duty leviable under Section 3 of the Customs Tarrif Act is the duty leviable in terms of the First Schedule to the Central Excises and Salt Act, 1944 regardless of any exemption from such levy. Shri Siem, the learned Member (Technical) held that 10% is not the leviable rate of duty and plays no part in determining the additional duty leviable under Section 3 of the Customs Tariff Act and agreed with Shri Sankaran's order allowing the appeals which were filed by the Revenue.

11. As the issues raised here were discussed and decided in the earlier appeal (Parekh Dye-chem) and we agree with the findings and conclusions, we do not accept the suggestion of Shri Jayant Bhushan that a Larger Bench should be

constituted. Whether a Larger Bench can be constituted, therefore, is not a point that arises now.

12. In the result we follow the ratio of the earlier order (supra) and dismiss all these appeals.