

COLLECTOR OF CUSTOMS, BANGALORE & ANR.

v.

HANSUR PLYWOOD WORKS AND ANR.

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OCTOBER 26, 1989

[S. RANGANATHAN AND KULDIP SINGH, JJ.]

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Customs Tariff Act, 1975: Schedule Heading No. 44.01 and Notifications No. 265 of 1982, No. 59 of 1983 and No. 126 of 1984—Timber from Burma exempted from customs duty—Levy of auxiliary duty—Determination of.

Import of timber is charged to effective basic customs duty at 60 per cent under the Customs Tariff Act, 1975. The Government of India had, however, issued notification under s. 25 of the Customs Act, 1962 absolutely exempting timber imported from Burma. But the importers are liable to pay auxiliary duty in terms of Notification No. 265 dated December 8, 1982 and its successor Notification Nos. 59 of 1983 and 126 of 1984, which prescribed two rates with reference to the rate of duty of customs. The explanation thereto provides that where there are two effective basic rates applicable in respect of any article and the differentiation in rates is attributable to the country of origin of the goods imported, then the auxiliary duty payable will be the higher of the two rates.

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The respondents had imported certain consignments of timber from Burma which were assessed to auxiliary duty at the higher rate as per notification. The Appellate Tribunal held in favour of the assessee-respondents.

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In these appeals by the Revenue under s. 130E(b) of the Customs Act, it was contended for the respondents that exemptions or concessions in respect of goods imported from certain countries were generally granted in pursuance of trade agreements entered into with those countries under s. 5 of the Tariff Act, that the expression "country of origin" in the notification had a special meaning and its determination governed by special provisions, and that, therefore, the explanation to the notification in question had to be confined in its application only to a comparison of the rates applicable under notification of concession and basic auxiliary duty determined accordingly.

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Allowing the appeals,

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A HELD: The auxiliary duty, in a case where imports from different countries attract different degrees of exemption under different notifications in pursuance of agreements under s. 5 of the Customs Tariff Act should be determinable separately by reference to the effective basic duty notified in respect of each such country. But, if there are different rates of effective duty notified for goods imported from different countries of origin, then, notwithstanding the agreement with each of these countries, the auxiliary duty under such a notification will not be determined, in respect of the import from each of such countries, by reference to the effective basic duty leviable in respect thereof, but will be determined with reference to the highest of the effective rates of duty applicable to all the imports. [778A-C]

C In the instant case, there is no material to show that the notification was issued in pursuance of an agreement. It is a case where the imports come from two sets of countries the imports from which attract two different effective basic rates of duty. The differentiation arises because in respect of one set of countries there is no notification of concession while in relation to the other there is a complete exemption granted under a notification. There is nothing in the language of the explanation that excludes such a case from its purview. The auxiliary duty is, therefore, to be determined with reference to the higher of the two effective rates of duty. [777H, 778C-D, F]

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E *Collector of Customs v. Western India Plywood Manufacturing Co. Ltd.*, [1989] Supp. 1 SCR 779, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3820-24 of 1988.

F From the Order dated 2.6.1988 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Order No. 410-414/88-D, Appeal Nos. CD/SB./659/86-D; C/1526/84-D, CD/SB/1522/86-D; C/1565/84-D and C/422/86—D.

G V.C. Mahajan, and P. Parmeshwaran for the Appellants.

V. Sridharan, A.R. Madhav Rao and V. Balachandran for the Respondents..

H The Judgment of the Court was delivered by

RANGANATHAN, J. These are appeals under section 130E(b) of the Customs Act from an order passed by the Customs, Excise and Gold Appellate Tribunal dismissing the appeals preferred by the Collector of Customs in the cases of M/s. Hunsur Plywood Pvt. Ltd. and M/s. Veneer Mills. The question raised involves the interpretation of Notification Nos. 59/83 and 126/84. These notifications are identically worded in all material respects with notification no. 265/Cus. dated 8.12.1982 and the question before us is directly governed by our judgment of even date in Civil Appeal Nos. 2644-48 of 1987 (*Collector of Customs v. Western India Plywood Manufacturing Co. Ltd.*, [1989] Supp. 1 S.C.R. 779). For the reasons set out in detail in the said judgment these appeals have to be allowed and the orders of the Assistant Collector rejecting the claims filed by the respondents have to be upheld.

When these matters were taken up, Shri V. Sridharan, appearing on behalf of the assessee-respondents, drew our attention to section 5 of the Customs Tariff Act. He contended that exemptions or concessions in respect of goods imported from certain countries are generally granted in pursuance of agreements entered into with those countries, that the expression "country of origin" has a special meaning and its determination governed by special provisions and that, in view of this, the explanation to the notification in question has to be confined in its application only to a comparison of the rates applicable under notifications of concession to goods imported from certain "countries of origin". In this case, though there are four different notifications, one each in respect of Burma, Nepal, Bangladesh and Bhutan, they are all notifications of complete exemption and the rate of auxiliary duty by reference to any one of them will according to the assessee, be the smaller rate mentioned in the relevant notification under consideration. The rate of basic duty in respect of other countries is 60% as there is no notification of exemption or concession in relation thereto. The argument is that the last of these should be ignored and the basic auxiliary duty determined only by reference to the rates prescribed in the four notifications of exemption. For the reasons set out in the judgment in the case of *Western India Plywood Manufacturing Co. Ltd.* we are unable to accept this contention.

We are unable to agree with the learned counsel that the interpretation given by us will be inconsistent with the agreement for concessional treatment that may have been entered into between the Government of India and the countries from which the goods in question are imported. In the first place, there is no material in the case before us to show that the notification under section 25 was issued in

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- A pursuance of an agreement under section 5 of the Customs Tariff Act. That apart, if this argument were sound, the auxiliary duty, in a case where imports from different countries attract different degrees of exemption under different notifications, should be determinable separately by reference to the effective basic duty notified in respect of each such country. But admittedly, if there are different rates of effective duty notified for goods imported from different countries of origin, then, notwithstanding the agreement with each of these countries, the auxiliary duty under the notification now under consideration will not be determined, in respect of the import from each of such countries, by reference to the effective basic duty leviable in respect thereof, but will be determined with reference to the *highest* of the effective rates of duty applicable to all the imports. If that be so, there is no reason why the position cannot be the same in a case like the present where the imports come from two sets of countries the imports from which attract two different effective basic rates of duty, although the difference arises because in respect of one set of countries there is no notification of concession while in relation to the other there is a complete exemption granted under a notification. As we have pointed out, there is nothing in the language of the explanation that excludes such a case from its purview.

Considering the language of the notification before us, as we have explained in the case of *Western India Plywood Manufacturing Co. Ltd.*

- E the result of reading the First Schedule along with the relevant notifications is that imports of timber into India from most countries is charged to effective basic customs duty as per the tariff in the Schedule whereas in respect of imports from Burma, Nepal, Bhutan and Bangladesh, the rate of effective basic duty is nil. The position, therefore, is that the article in question is liable to two or more different rates of effective basic duty based on the country of origin for the import. It, therefore, follows that the auxiliary duty is to be determined with reference to the higher of the two effective rates of duty.

- G We, therefore, see no reason to reach a different conclusion in the present case from that arrived at by us in the case of *Western India Plywood Manufacturing Co. Ltd.* We, therefore, allow the appeals and restore the orders of the Assistant Collector rejecting the claims of refund filed by the assessees. The appeals are allowed but there will be no order as to costs.