

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 216 OF 2007

COMMISSIONER OF CUSTOMS, MUMBAI-I

... Appellant

VERSUS

M/S SEIKO BRUSHWARE INDIA

... Respondent

J U D G M E N T

R. F. NARIMAN, J.

Despite service, nobody appears for the respondent.

We have heard Shri Arijit Prasad, learned counsel appearing on behalf of the Revenue.

The issue in this appeal relates to the denial of the benefit of Exemption Notification No. 34/98-Cus. dated 13.06.1998 which reads as follows:-

"In exercise of the powers conferred by sub-section (1) of Section 3A of Customs Tariff Act, 1975 (51 of 1975), the Central Government having regard to the maximum sales tax, local tax or any other charges for the time being leviable on the like goods on their sale or purchase in India, hereby specifies the rates of special additional duty as indicated in column (3) in table below in respect of goods, when imported into India, specified in corresponding entry in column(2) of the said table and falling within First Schedule to the said Customs Tariff Act:" Against the relevant entry 'Nil' rate has been specified for All goods falling under the said First Schedule which are imported for sale as such, other than by way of high sea sale and the importer at the time of importation or at the time of clearances of warehoused goods for home consumption under the provisions of Section 68 of the Customs Act, 1962 (no. 52 of 1962), as the case may, makes a specified

declaration to that effect in the Bill of Entry in the manner specified below.

Provided that rate specified therein shall not apply if the importer sells the said imported goods from a place located in an area where no tax is chargeable on sale or purchase of goods."

A reading of this Notification would show that exemption is granted only in respect of such goods which the importer sells post importation from a place located in an area where no tax is chargeable on sale of goods.

The facts of the present case are that pig hair bristles that were imported were sold in the years 1998-1999 and 1999-2000. Revenue issued a show cause notice dated 26.03.2003 stating that since these pig hair bristles were, in fact, sold without any sales tax been paid thereon, the benefit of Exemption Notification dated 13.06.1998 would not be available to the importer in the present case.

By a reply dated 17.10.2003, the importer essentially contended that pig hair bristles may be exempted from sales tax but that did not mean that they were not chargeable to sales tax.

In a detailed order dated 31.03.2004, the learned Commissioner, after setting out the Notification dated 13.06.1998, and after hearing the importer, ultimately came to the conclusion that an Exemption Notification exempting pig hair bristles from tax would amount to a case where no tax is chargeable on the sale of goods and therefore, the

benefit of the said Notification would not be available to the importer in the present case.

In an appeal against the said order by the importer/assessee, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') vide its judgment dated 22.02.2005 has held in favour of the assessee as follows: -

"We have heard both the sides and in our view, the contention raised by the learned counsel deserves to be accepted. We find that the exemption Notification issued by the Sales-tax Department of Delhi and UP state opponent from where goods in question after import without payment of SAD under Notification No. 34/98 detailed above, were sold only exempted the payment of tax on the sale and purchase of the goods at that time and but for these exemption notifications, the goods were otherwise chargeable to Tax. It was only the payment of tax which was deferred/exempted under those notifications for the period mentioned therein. The exemption notification did not render the goods non-chargeable to tax, but only allowed concession in the tax by way of exemption for some period. Therefore, the appellants cannot be said to have sold the goods from the places where no tax was chargeable on the sale/purchase of the goods and thereby violated the condition contained in the above said exemption Notification No. 34/98-Cus.

It was contended by Shri Arijit Prasad, learned counsel appearing on behalf of the Revenue, that the CESTAT has not taken note of Section 7 of The Delhi Sales Tax Act, 1975 (hereinafter referred to as 'Act') by which pig hair bristles were said to be in the nature of tax free goods.

He further contended that in the present case, the CESTAT was not correct in referring to an Exemption Notification. What was, in fact, notified was the addition

of Entry No. 67 to the Third Schedule of the Act vide Notification dated 15.10.1996 which was wrongly referred to as an Exemption Notification.

We find considerable force in the submission of Shri Arijit Prasad.

Section 7 of the Delhi Sales Tax Act, 1975 reads as under: -

"7. Tax-free goods.-(1) No tax shall be payable under this Act on the sale of goods specified in the Third Schedule subject to the conditions and exceptions, if any, set out therein.

(2) The lieutenant Governor may by notification in the Official Gazette, add to, or omit from, or otherwise amend, the Third Schedule either retrospectively or prospectively, and thereupon the Third Schedule shall be deemed to be amended accordingly:

Provided that no such amendment shall be made retrospectively if it would have the effect of prejudicially affecting the interests of any dealer."

The imported goods, viz., pig hair bristles, find mention in Entry 67 of the Third Schedule which reads as follows: -

"Pig hair bristles and paint brushes made of pig hair bristles."

It will be noticed that the charging Section itself, viz., Section 3 of the Act, speaks of a dealer whose turnover during the year immediately preceding the commencement of this Act exceeds the taxable quantum as also every registered dealer liable to pay tax under this Act on all sales effected by him on or after such commencement. It will, thus, be seen

that even the charging Section uses the expression "liable to pay tax".

Correspondingly, Section 7, whose marginal note indicates that the subject matter of the said section is tax free goods, also uses the same expression as is used in Section 3, viz., "no tax shall be payable under this Act".

On a reading of Sections 3 and 7 of the Act, it becomes clear, therefore, that so far as the imported item, viz., pig bristles is concerned, no sales tax, in fact, is charged on the same. This being the case, it is obvious that the proviso to the Notification dated 13.06.1998 gets attracted and since no tax is chargeable on the sale of such goods, the said Exemption Notification will therefore, not apply.

We, accordingly, set aside the judgment of CESTAT and restore that of the Commissioner. The appeal is disposed of accordingly.

JUDGMENT

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
September 04, 2015.