

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
VICTORY PLASTICS PVT.LTD. & ANR.

DATE OF JUDGMENT: 13/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1996 SCALE (2)697

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal is preferred against the judgment of the Bombay High Court allowing the writ petition filed by the respondent. The writ petition was directed against the order of the Assistant Collector, Customs rejecting a refund application filed by the respondent.

The respondent had imported P.V.C. resin which is liable to payment of duty under tariff item No. 39.01/96 of the First Schedule to the Customs Tariff Act, 1975. The Central Government had, however, issued an exemption notification providing that P.V.C. resin falling under Chapter 39 when imported into India shall be exempt from the whole of the duty of customs leviable thereupon. This notification dated March 15, 1979 stated that it shall remain in operation till March 31, 1981. On October 16, 1980, however, the said notification was modified by another notification limiting the exemption to the duty in excess of forty percent ad valorem. The respondent, it is not in dispute, opened the letters of credit only on November 20, 1980, i.e., after the issuance of the notification dated October 16, 1980. The import was much later. Even so, they contended that they should get the benefit of full exemption of duty as provided by the first notification dated March 15, 1979 and that the notification dated October 16, 1980 cannot be applied to him. This contention was rejected by the Assistant Collector but the High court has upheld the same.

An identical dispute has been pronounced upon by this Court in *Kasinka Trading & Anr. etc. v. Union India & Anr.* [J.T.1994 (7) 362]. The said decision deals with these very notifications. Indeed, that was a case where the appellant had placed orders for the import of P.V.C. resin before the issuance of notification dated October 16, 1980. Even so, it was held that he cannot plead promissory estoppel nor can he claim full exemption under notification dated March 15, 1979

ignoring the later notification. The case before us is a clearer one in the sense that the opening of letters of credit and the transaction was entered into after the issuance of the notification dated October 16, 1980. Following the said decision - and also having regard to the aforementioned factual position - this appeal is allowed. The judgment of the High Court is set aside.

No costs.

JUDIS