

PETITIONER:
INDIAN FARMERS FERTILIZERS CO-OPERATIVE LTD. AHMEDABAD

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 14/12/1999

BENCH:
R.C.Lahoti, S.P.Bharucha

JUDGMENT:

Santosh Hegde, J.

The appellant, who is a registered multi-unit cooperative society under the Bombay Cooperative Societies Act, filed writ petitions under Special Civil Application Nos.94 and 472 of 1977 before the High Court of Gujarat at Ahmedabad seeking issuance of a writ of certiorari to quash and set aside the order made by the Appellate Collector of Customs, Bombay, dated 25.2.1976 confirming the order made by the Collector of Customs at Kandla dated 26.2.1975.

It was contended before the High Court that the appellant manufactures chemical fertilizer and other allied products in its factory at Kalol and new Kandla Port in the State of Gujarat. It is also stated that for the purpose of manufacture of chemical fertilizers, the appellant imports phosphoric acid for use in the manufacture of Nitrogen phosphorous potash, and by the impugned order the respondents had levied auxiliary duty of customs at the rate of 15 per cent purporting to levy the same under Clause 1 of Notification No.14 dated 1.3.1974 issued by the Central Government in exercise of its power under Section 25(1) of the Customs Act, 1962 read with Clause 19(4) of the Finance Bill, 1974. The appellant contended before the High Court that, as a matter of fact, the phosphoric acid imported by the appellant was subjected to a levy of 5% of auxiliary duty of customs under the above Notification because the goods imported by the appellant would fall under Clause 2 of the said Notification. Since the appellant was wrongly levied higher auxiliary duty at 15 per cent, it had prayed for refund of the excess amount collected from it.

It is not in dispute that at the relevant time the rates at which the customs duty was to be recovered was specified in the First and the Second Schedule of the Indian Tariff Act, 1934 which had provided for levy of duty at standard rate, preferential rate and protective rate as specified in the First Schedule. The import made by the appellant was referable to Item No.28(16) which prescribed a standard rate and preferential rate of duty for phosphoric acid.

Section 19 of the Finance Act, 1974 has made a

provision for levy of auxiliary duty on goods covered by the First Schedule to the Tariff Act, as amended from time to time, at 20% of the value of goods as determined in accordance with the provisions of the Customs Act, 1962. The auxiliary duty is in addition to the duties chargeable under the Act. Therefore, in exercise of the power conferred upon Section 25(1) of the Act and Section 19(4) of the Finance Act, 1974, the Central Government by Notification dated 1.3.1974 exempted the goods specified in column 2 of the Table being goods mentioned in the First Schedule to the Act, from so much of the auxiliary duty as is in excess of the rate specified in column 3 of the said Table. The relevant part of the Notification is as under :-

Sl.No.	Description	(1)	(2)	(3)
1.	Goods in respect of which the rate Fifteen percent of the of duty of customs specified in the goods as determined in said First schedule read with any accordance with the pro- relevant notification of the Govern- visions of Section 14 ment of India for the time being in of the Customs Act, force is 60 per cent ad valorem or 1962 (52 of 1962). more but less than 100 per cent ad valorem.			
2.	Goods in respect of which the rate Five per cent of the of duty of customs specified in the value of the goods as said First schedule read with of determined in accor- the Govt. of India for the time being dance with the pro- in force, is less than 60% ad or nil. visions of Section 14 of the Customs Act, 1962 (52 of 1962) 3. xx xx			
4.	xx xx			

Explanation: For the purposes of Serial Nos.1 and 2 in the above table, the expression the rate of duty of customs specified in the said First Schedule read with any relevant notification of the Government of India, in relation to any article liable to two or more different rate of duty, means that rate of duty which is the highest of those rates.

Before the High Court, it was contended on behalf of the appellant that the phosphoric acid imported by the appellant for the manufacture of fertilizer is liable to auxiliary duty @ 5% under clause 2 of the aforesaid Table and not @ 15% under Clause 1. Section 12 of the Act provides that except as otherwise provided or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934 (presently known as the Customs Tariff Act, 1985) or any other law for the time being in force, on goods imported into or exported from India. Therefore, on the import of the goods into India duties of customs as specified in the First and Second Schedules of the Indian Tariff Act, 1934 are required to be levied. This is provided in Section 2 of the Indian Tariff Act. The said Act empowers the Central Government for levy of preferential rates of duties and protective rates of duties. For the import of phosphoric acid, Tariff Item is 28(16) which provides the standard rate of duty if it is imported from

Burma at 10% ad valorem. Pursuant to the power vested in it under Section 26 of the Act, the Central Government by Notification dated 28.4.1969 has exempted phosphoric acid falling under Item 28(16) when imported for the manufacture of fertilizer so much of that portion of the duty of customs leviable thereon which is in excess of 30% ad valorem. Therefore, for phosphoric acid, the standard rate of duty is 60% ad valorem, preferential rate of duty is 10 per cent ad valorem if it is imported from Burma and 30 per cent ad valorem if imported from a country other than Burma. Therefore, it is apparent that for phosphoric acid, three different rates of duty are fixed. For determining auxiliary duty, Explanation to the Table provides that for the purpose of serial Nos.1 and 2, the expression rate of duty of customs specified in the First Schedule read with any relevant notification of the Government of India in relation to any article liable to two or more different rates of duty, means that rate of duty which is the highest of those rates. In the instant case, it is seen that the highest rate of duty specified in the First Schedule for the phosphoric acid as per Item 28(16) is 60 per cent. Hence, in the instant case, the highest rate for import of phosphoric acid would have been 60 per cent but for the Notification referred to above, since the import in question was from Burma, the duty payable is 30 per cent ad valorem. Hence, from a perusal of the First Schedule read with Notification dated 28.4.1969 it is clear that so far as the import of phosphoric acid by the appellant is concerned, it falls at serial No.1 of the aforesaid Table and 15 per cent auxiliary duty is required to be paid. We also find support to the above reasoning of ours from the judgment of this Court in the case of Collector of Customs v. Western India Plywood Manufacturing Co. Ltd. (1989 (44) ELT 595) wherein while considering the levy of auxiliary duty on the import of timber from Burma, this Court held thus :-

When different rates slab of the auxiliary duty under an Exemption Notification are provided based on the effective rate of Basic customs duty and the Explanation thereto provides in case of two or more rates of Basic duty in relation to an Article because of the reasons of the country of origin, the rate of auxiliary duty is to be fixed as per the highest rate of Basic duty, the reference to the two or more rates of Basic duty does not confine to two effective rates under two Exemption Notifications but would also include one effective rate under Exemption Notification and the other rate under the Schedule. Accordingly the timber which was subject to 60% rate of duty under the Tariff Schedule and totally exempted from Basic duty by an Exemption Notification would amount to two rates of duty for the purposes of Notification No.126/84-Cus. and accordingly the Auxiliary duty at the rate of 40% is applicable.

The Notification which was considered by this Court in the said case and the Notification applicable in this case are similar, hence, the said pronouncement of this Court would apply on all fours to the present case. We find no reason to differ from the view taken by this Court in the said case. For the reasons stated above, these appeals fail and are dismissed. No costs.