

A

UNION OF INDIA

v.

VICTORY PLASTIC PVT. LTD. AND ANR.

FEBRUARY 13, 1996

B

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

*Customs Tariff Act, 1975 :*

C *First schedule—Item No. 39.01/06—P.V.C. resin—Liable to payment of duty—Subsequently exempted by Notification dated 15.3.79 to be operative till 31.3.1981—Modified by another Notification limiting the exemption to the duty in excess of forty per cent ad valorem—Party opening the letters of credit only on 20.11.1980 after the modified Notification—Party claiming full exemption of duty—Claim rejected by Assistant Collector but upheld by the High Court—Held, opening of letters of credit and entering into transaction after modified notification—Hence not entitled to full exemption of duty.*

D

*Kasinka Trading & Anr. Etc. v. Union of India & Anr., J.T. (1994) 7 362, relied on.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3336 of 1996.

From the Judgment and Order dated 16.6.93 of the Bombay High Court in W.P. No. 1678 of 1983.

F Joseph Vellapally, V.K. Verma and N.K. Bajpayee for the Appellants.

The following Order of the Court was delivered :

Leave granted.

G 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.

H The respondent had imported P.V.C. resin which is liable to payment of duty under tariff Item No. 39.01/06 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 of 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.

G.N.

Appeal allowed.