
(1984) 10 KL CK 0012
In the High Court Of Kerala
Case No : Writ Appeal No. 150 of 1984

Aluminium Industries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-10-1984

Acts Referred:

Customs Act, 1962 — Section 106, 110, 111, 113, 115
Customs Tariff Act, 1975 — Section 2, 3
Finance Act, 1980 — Section 4(4), 47
Finance Act, 1981 — Section 47
Sea Customs Act, 1878 — Section 37, 57, 86

Citation : (1985) 4 ECC 1 : (1985) ECR 554 : (1999) 110 ELT 474

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : V. Vyasani Poti and T. Chengalvarayan, for the Appellant; Central Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—The learned Judge from whose judgment in O.P. No. 5049 of 1981 this Appeal arises, rejected the petitioner's prayer for a writ of certiorari to quash Exts. PI and P3 demanding additional duty in the sum of Rs. 10,75,050.66 u/s 3 of the Customs Tariff Act, 1975 and for a direction to refund a sum of Rs. 1,62,517.11 alleged to have been excess paid by the petitioner as auxiliary duty u/s 47 of the Finance Act, 1981. Dismissing the Original Petition, the learned Judge held that the petitioner was liable to pay duties of customs as per the rates in force on 28-3-1981 which was the date on which the bill of entry was filed.

2. The admitted facts are : The vessel carrying 260 MT Aluminium ingots consigned to the petitioner reached Cochin Port on 25-3-1981. The inward entry for the vessel was granted on 26-3-1981. The bill of entry for the clearance of the goods was presented on 28-3-1981. With effect from 27-3-1981 auxiliary duty at 5 per cent became payable and additional duty was enhanced from 12.5

percent to 40 percent plus 10 per cent SED.

3. Duties of customs are levied u/s 12 of the Customs Act, 1962 (the "Act") at the rates specified under the Customs Tariff Act, 1975 (the "Tariff Act") or any other law for the time being in force, on goods imported into or exported from India. The date for determination of rate of duty is that which is specified u/s 15 of the Act. Section 25 of the Act has conferred power on the Central Government to exempt specified goods from the whole or any part of the customs duty leviable thereon. The rates at which duties of customs are levied under the Customs Act are specified in the 1st and 2nd Schedules of the Tariff Act (See Section 2 of the Tariff Act). Section 3 of the Tariff Act charges additional duty on articles imported into India. Such duty is equal to the excise duty for the time being leviable on like articles if produced or manufactured in India. The provisions of the Customs Act, 1962 and the rules and regulations made thereunder are, so far as may be, applicable to the duty chargeable u/s 3 of the Tariff Act as they apply in relation to the duties chargeable under the Customs Act. Section 47 of the Finance Act levies, at the rates specified therein, auxiliary duties of customs on goods mentioned in the 1st Schedule to the Tariff Act. The provisions of the Customs Act and the rules and regulations made thereunder are, so far as may be, applicable to the levy and collection of auxiliary duties of customs under the Finance Act.

4. By Notification No. 186/F. No. 355/160/79-Cus. I (G.S.R. No. 531-E), published in the Gazette of India, Extraordinary, Part II, Section 3(1), dated 9-9-1980, the Government of India, in exercise of its power u/s 25(1) of the Act, exempted Aluminium ingots falling within Chapter 76 of the 1st Schedule to the Tariff Act from the whole of the duty of customs leviable thereon as from the date of the publication of the notification. This notification was to remain in force up to and inclusive of 31-3-1981. As a result of this notification, the basic duty of customs payable during the relevant period ending on 31-3-1981 was Nil. By Notification No. 176/F. No. 355/160/79-Cus. I (G.S.R. No. 505-E), published in the Gazette of India, Extraordinary, Part II, Section 3(1), dated 29-8-1980, the Government of India, in exercise of its power u/s 25(1) of the Act exempted Aluminium ingots from so much of the additional duty leviable thereon u/s 3 of the Tariff Act as was in excess of 12.5 per cent ad valorem. However this notification was, in exercise of the power u/s 25(1) of the Act, rescinded by the Government of India by a subsequent Notification No. 76/F. No. 355/8/81-Cus. I, published in the Gazette of India, Extraordinary, Part II, Section 3(1), dated 27-3-1981, as a result of which additional duty became payable at the full rate mentioned u/s 3 of the Tariff Act. By Notification No. 41/F. No. 334/5/80 : TRU (G.S.R. 122-E), published in the Gazette of India, Extraordinary, Part II, Section 3(1), dated 25-3-1980, the Government of India, in exercise of its power u/s 25(1) of the Act read with Section 4(4) of the Finance Act, 1980, granted a general exemption in respect of the goods specified in the 1st Schedule to the Tariff Act from the whole of the auxiliary duty leviable under the Finance Act. However by a subsequent Notification No. 75/F. No. 355/8/81-Cus. I, published

in the Gazette of India, Extraordinary, Part II, Section 3(1), dated 27-3-1981, the Government of India, in exercise of its powers u/s 25(1) of the Act read with Section 47(4) of the Finance Bill, 1981 (read with Act 16 of 1931), exempted Aluminium ingots (and certain other articles) from so much of auxiliary duty as was in excess of 5 per cent of its value. As a result of this later notification, the earlier Notification dated 25-3-1980 granting the general exemption was impliedly superseded in so far as the goods in question were concerned, and consequently 5 per cent auxiliary duty became payable on such goods. The effect of these notifications as from 27-3-1981 is that, in respect of Aluminium ingots, additional duty was raised from 12.5 per cent to 40 per cent plus 10 per cent SED and auxiliary duty became payable at 5 per cent. The basic customs duty at the relevant time was however Nil. Prior to 27-3-1981 and subsequent to that date during the relevant period duties of customs payable on imported Aluminium ingots may therefore be tabulated as follows :

Prior to 27-3-1981	From 27-3-1981	Basic duty	Nil	Nil	Auxiliary duty	Nil	5%
		Additional duty	12.5%	40+10% SED			

5. Counsel for the appellant Shri T. Chengalvarayan submits that the goods in question were imported into India as soon as the vessel carrying them entered the territorial waters of this country. Importation of the goods materialised at that point of time. The duties of customs, he says, were attracted as soon as the goods were so imported and the subsequent quantification of the duties ought to be made with reference to the rates in force at that time. Referring to the decision of the Bombay High Court in *Sawhney v. Syl-vania and Laxman*, 1975 Bom. L.R. 380 and other cases, counsel submits that chargeability in respect of levy of customs duty arises from the import of goods. The provisions of the Act do not postpone chargeability till the bill of entry is presented. The goods in the present case having been admittedly brought into Indian territorial waters prior to 27-3-1981, the enhanced rates, which became effective only as from that date, are not applicable in respect of those goods. He further submits that the notifications enhancing the rates by cancellation or reduction of the exemptions granted under the earlier notifications being not retrospective, the rates which applied at the point of time when the vessel entered the territorial waters remain unaffected and govern the levy in respect of these goods.

6. The sovereignty of India extends beyond its land territory and internal waters to an adjacent belt of sea described as the territorial waters and the limit of which is the line, every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate baseline. Subject to the right of "innocent passage" through the territorial sea, all foreign merchant ships while in the territorial or internal waters of India fall under the jurisdiction of this country. This jurisdiction of India extends beyond and adjacent to the territorial sea over an area described as the contiguous zone, the limit of which is the line every point of which is at a distance of 24 nautical miles from the nearest point of the baseline from which the breadth of the territorial sea is measured. The Central

Government is entitled to exercise such powers and take such measures in or in relation to the contiguous zone as it may deem necessary with respect to the security of India and immigration, sanitation, customs and other fiscal matters or any other matter as the Government may specify by notification. The Union of India is also entitled to exercise sovereign rights of or certain specified purposes in an area beyond and adjacent to the territorial waters and described as the exclusive economic zone, the limit of which is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

7. The Customs Act contains various provisions answering the authorities under that Act to exercise jurisdiction over ships and persons not only in the internal waters, i.e. water in ports, harbours, roadsteads and mouths of rivers, but also in the territorial sea and the contiguous zone. These waters are described as the "Indian customs waters" u/s 2(28) of the Act. Power is conferred on the authorities to confiscate any vessel which is or has been within the Indian customs waters while constructed, adopted, altered or fitted in any manner for the purpose of concealing goods or while engaged in the commission of any of the offences mentioned under the Act (Section 115). The proper officer is authorised under the Act to stop and search any such conveyance within these waters and seize goods, documents and things on board (Sections 106 and 110). The police power of the authorities under the Act to prevent smuggling and other illegal activities extends over the Indian customs waters. The Act contains specific provisions relating to the levy of customs duties on imported or exported goods. No vessel entering India from any place outside is allowed to call for the first time after arrival in Indian waters, or at any time while carrying passengers or cargo, at any place other than a customs port, except in cases of distress (Section 29). The customs port is specially appointed by the Central Government for the purpose of unloading imported cargo or loading cargo for export [Section 2(12) and Section 7]. "Customs area" is the area meant for keeping imported goods or goods for export before clearance by the authorities [Section 2(11)]. Any goods imported by sea and unloaded or attempted to be unloaded at any place other than a customs port are liable to be confiscated. Any goods attempted to be exported from any place other than a customs port are likewise liable to be confiscated (Sections 111 and 113). The person in charge of a vessel carrying imported cargo must within 24 hours after its arrival at a customs port deliver to the concerned officer an import manifest in the prescribed form (Section 30). The master of the vessel must not permit the unloading of any imported goods until an order has been given by the concerned officer granting "entry inwards" to such vessel (Section 31). No such order is ordinarily made in the absence of an import manifest and no unloading of imported cargo, not mentioned in the manifest, is ordinarily allowed (Sections 31 and 32). Unloading of imported cargo or the loading of export cargo is not allowed except in an approved place in the customs port and under the supervision of the Customs Officer (Sections 33 and 34 read with Section 8). All imported goods unloaded in a customs area have to remain in the custody of an authorised person until they

are cleared for home consumption or warehoused or transhipped (Section 45). The importer of any goods, other than goods intended for transit or transshipment, has to make entry thereof by presenting to the proper officer a "bill of entry" for home consumption or warehousing in the prescribed form. The bill of entry may be presented at any time after the delivery of the import manifest. It may be presented even before the delivery of such manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week from the date of such presentation. The importer has to make and subscribe at the foot of the bill of entry a declaration as to the truth of the contents of that document and must, in support of such declaration, produce to the concerned officer the invoice, if any, relating to the imported goods (Section 46). If the concerned officer is satisfied that the goods entered for home consumption are not prohibited goods and the importer has paid proper duty thereon, including charges, if any, the officer may make an order permitting clearance of the goods for home consumption (Section 47). If the goods brought into India from outside are not cleared for home consumption or warehoused or transhipped within two months from the date of their unloading at a customs port, or with such further time as the officer may grant, or if they are abandoned, the person having custody of the goods may, after due notice to the importer and with the permission of the officer, sell the same (Section 48). These and other provisions in the Act regulate the manner in which and the place at which imported goods are allowed to be unloaded. Although the expression "import" is defined to mean "bringing into India from a place outside India", and "India" includes the "territorial waters of India", Section 2(23) and 2(27), the unloading of imported cargo is not permitted anywhere in the Indian customs waters except within the specified portions of the port. This restriction is essential to maintain tight control over vessels and persons and things thereon while in Indian waters in order that any attempt to smuggle goods or commit any other offence within these waters is effectively prevented. It is for this purpose that the place at which cargo can be loaded or unloaded is specified under the Act.

8. Duties of customs are levied in relation to goods brought into India from a place outside India. It is the act of import that attracts customs duty in respect of these goods. As stated by the Supreme Court in *In Re : Sea Customs Act*, Section 20(2), AIR 1963 SC 1760,1776 :

"... Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country. Such a condition is imposed by way of the exercise of the power of the Union to regulate the manner and terms on which goods may be brought into the country from a foreign land."

The payment of duties of customs is a condition precedent to the grant of permission to allow the imported goods to mix with the "mass of goods" in the

country. Customs duties are charged on commodities on their being imported into or exported from the country. To constitute an import within the Customs laws for the purpose of levy it is necessary that goods be brought into a proper port of entry with an intent to unload them. The act of importation therefore implies, in the context of levy, bringing goods into an Indian port for the purpose of discharge. There is no importation to attract customs duty if the cargo is in transit or is intended for transshipment. The goods which are brought into the country for the purpose of discharging them at an Indian port cease to be imported goods after they are cleared for home consumption. The mere act of bringing goods into the port therefore does not constitute an importation, although unexplained it may be evidence of that fact. "If goods, however, are brought into their port of destination for the purpose of being there discharged, the act of importation is complete" per Starke J. in *Wilson v. Chambers & Co. Pvt. Ltd.* (1925) 38 RLR 131. As stated by Lord Davey in *Canada Sugar Refining Company v. Rea* (1898) AC 735, in the context of the Customs Act, 1886 and the Customs Tariff Act, 1894 of Canada, "the words 'Imported into Canada', must, in order to give any rational sense to the clause, mean imported at the port of discharge, -...". It may be that in a general sense the course of import commences at the time the vessel carrying goods intended to be discharged at an Indian port enters the territorial waters for the purpose of proceeding to the port, but the act of import for the purpose of levy does not materialise until the goods have been brought into the port of discharge and the vessel is granted "entry inwards" and the bill of entry has been presented. The levy of duty is made with reference to that particular point of time, and the rates applicable are those then in force.

9. We shall now examine the relevant provisions concerning the levy of duty.

10. Section 12 which is a charging section reads :

"12. Dutiable goods.- (1) Except as otherwise provided in this Act, 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 Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from India.

(2)...".

The Section begins by saying "except as otherwise provided in this Act, etc." indicating that the levy is subject to the other provisions of the Act or any other law for the time being in force. The duties of customs are those specified under the Tariff Act or any other law for the time being in force. They would thus include the additional duty levied under the Tariff Act and the auxiliary duty under the Finance Act. Section 14 speaks of valuation of goods for the purpose of assessment where duty is chargeable by reference to value. Section 12 merely refers to the rates of levy under the relevant enactments. It does not refer to the point of time to which the rates are related. This is done by Section 15 which specifies the date for determination of rate of duty and tariff valuation of

imported goods. This section reads :

"15. Date for determination of rate of duty and tariff valuation of imported goods. - (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) In the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty. Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post."

This is an important Section which contains a guide to determine which is the duty that is applicable on the relevant date. In respect of goods entered for home consumption u/s 46, the rates applicable are those in force on the date on which the bill of entry is presented. However, if the bill of entry has been presented before the date of entry inwards of the vessel, the bill of entry is deemed to have been presented on the date of such entry inwards. This shows that the actual or deemed date of the bill of entry is the point of time with reference to which the rates are determined. In the case of goods cleared from a warehouse u/s 68, the rates applicable are those in force on the date on which the goods are actually removed from the warehouse. In the case of any other goods it is the date of payment that determines the rate of duty. These provisions indicate that the importer is liable to pay duty at the rate in force as specified in Section 15. This Section thus fills up the lacuna of Section 12 which, without the aid of the former, cannot operate and they must therefore be read together. It is with reference to those two Sections that an assessment of duty is made u/s 17.

11. Section 25 confers power on the Central Government to grant exemption from duty. It reads;

"25. Power to grant exemption from duty. - (1) If the Central Government is satisfied that it is necessary in the public interest so to do it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance), as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2)..."

It is in exercise of the power u/s 25 that the notifications referred to earlier were

issued exempting the goods completely or partially from duties or cancelling or altering the exemption as a result of which excess duties became payable by the petitioner.

12. It is futile to enquire for the purpose of levy at what point of time the vessel entered the territorial waters of India, for, as pointed out by the High Court of Delhi in *Jain Shudh Vanaspati Limited Vs. Union of India and Another*, it is difficult for determination with exactitude. It is an uncertain time and place for imposition of duty, although all ships in the "Indian customs waters" which include the territorial sea and the contiguous zone, fall under the control of the Customs authorities for the various purposes mentioned in the Act. Levy of duty, in respect of the goods imported, is ascertained only with reference to the time and space specified under the relevant provisions. There is no levy until the necessary documents such as the import manifest, the invoice and the bill of entry are presented to the concerned officer and the vessel is granted entry inwards at the place of unloading within the port. It is at this stage that the goods are charged with duty at the rates then in force. Only such goods as are legally brought into the country for the purpose of import by presenting the bill of entry on payment of proper duties, penalties, rent, interest, etc., for clearance for home consumption, or by keeping them in a bonded warehouse u/s 68 for subsequent clearance on furnishing the bill of entry and paying proper duties, etc., can be said to have been imported into the country. Discharge of goods in any other manner or at any other place is illegal and such goods are liable to seizure and confiscation. The importation of the goods therefore materialises or its process becomes complete and the goods become qualified to be cleared to merge with the mass of goods in the country only at the time and place of presentation of the bill of entry and payment of the duties and other charges. What is referred to as the "imported goods" (Section 15) or the "goods imported" Section 12 are goods which are still not released from the stream of import, but have completed the course and are awaiting release by clearance to become part of the mass of goods within the country. The chargeability and the computation of the charges are both centred at that point of time and space as provided in Sections 12 and 15. Any other construction of these provisions so as to separate chargeability from computation by relating chargeability to the time of entry into the territorial waters and computing the duties with reference to the rates then in force is to construe the Sections artificially and contrary to the legislative intent. The general scheme of the Act does not permit the computation to be related to an anterior date. It is intended to be made, in the case of goods entered for home consumption, with reference to the duty payable on the actual or deemed date of presentation of the bill of entry, or in the case of warehoused goods, on the date of their removal from the warehouse, or, in the case of any other goods, on the date of payment of duty. What is payable is what was in force on the relevant date. That a different rate of duty was payable at the time of entry of the vessel into the territorial waters of India or at any time prior to the dates specified u/s 15 is immaterial. The legislative intent is to charge the goods with

the duty payable on the relevant date and not any other date. This is the most convenient method of fixing the duties and collecting the same. The space and time are both certain, and the enforcement of collection is easiest at that point. That is the relevant stage for the purpose of chargeability, computation and collection. A similar method of imposition computation and collection is provided u/s 16 read with Section 12 for export cargo. The construction of the provisions which we have adopted is fully justified by the legislative history of these provisions. In discussing the relevant provisions of the Sea Customs Act, 1878 such as Sections 37, 57, 86 and other provisions in *The Collector of Customs, Calcutta and Another Vs. G. Dass and Co. and Others*, , and in *The Assistant Collector of Customs and Others Vs. Dutex Clock Company*, the Supreme Court held that duty was payable as per the rates in force on the actual or deemed date of presentation of the bill of entry. A like construction of Section 15 of the present Act was adopted by the Supreme Court in *Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others*, , where the court held that for goods falling u/s 15(l)(b) the rate of duty applicable was the rate in force on the date on which the warehoused goods were actually removed from the warehouse. A similar construction was adopted by the Supreme Court in *Gangadhar Narsingdas Agarwal Vs. P.S. Thiruvikraman and Another*, in regard to levy on cargo entered for export. The court held that the duty was to be calculated with reference to the rates in force on the date on which the shipping bill was presented in terms of Section 16.

13. In the light of what we have stated above, the reasoning of the Bombay High Court in *Shawhney v. Sylvania and Luxman* - (1975) 72 Bom LR 380 (Synthetics and Chemicals Ltd. v. S.C. Coutinho and Ors. 1981 (8) LLJ 414 (Bom) and *New India Industries Ltd. v. Union of India* 1981 Tax. LR 2673, and that of the Madras High Court in *M/s. Sundaram Textiles Ltd. v. Asstt. Collector of Customs* 1983 2 MLJ 92 where the learned Judge did not follow his earlier decision to the contrary in *K. Jamal & Co. v. Union of India* (1981) MLJ 162, and other decisions relied on by the appellants' counsel does not appear to us, with great respect, to be in accord with what seems to us to be the proper construction or the relevant provisions of the Act or with the decisions of the Supreme Court cited above. We respectfully agree with the views expressed on the point by the Delhi High Court in *Jain Shudh Vanaspati Ltd. and Anr. v. Union of India and Ors.* [1983 (14) LLJ 1688 (Del) and by the Calcutta High Court in *Shewbuxrai Ondarmall v. Asstt. Collector of Customs and Ors.*- 1981 (8) LLJ 298 (Cal).

14. There is no substance in the contention that the rates have been applied retrospectively. The rates applied were those in force on the date on which they were determined in terms of Section 15.

15. In the light of what we have stated, we are of the view that the learned Judge has correctly held that the duties payable by the petitioner were those which were in force on the date of filing the bill of entry, i.e. 28-3-1981. In the circumstances we see no merit in the challenge against the impugned notices.

The appeal is unsustainable. It is accordingly dismissed. The parties will, however, bear their respective costs.